

JESSICA KARP (CA. BAR NO. 277347)
UC Irvine Immigrant Rights Clinic
University of California, Irvine School of Law
c/o National Day Laborer Organizing Network
675 S. Park View St.
Los Angeles, CA 90057
Telephone: (213) 380-2214
Facsimile: (213) 380-2787
jkarp@ndlon.org

Attorney for Plaintiff
Asian Law Caucus

ORIGINAL
FILED
APR 09 2013
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

ASIAN LAW CAUCUS,

Plaintiff,

v.

UNITED STATES IMMIGRATION
AND CUSTOMS ENFORCEMENT;
UNITED STATES DEPARTMENT
OF HOMELAND SECURITY,

Defendants.

Civil Action No.:

CV 13 1593

**COMPLAINT FOR
DECLARATORY
AND INJUNCTIVE
RELIEF**

EDL

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This is an action pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, for declaratory, injunctive, and other appropriate relief to compel the release of agency records improperly withheld from the Asian Law Caucus (ALC, "Plaintiff") by United States Immigration and Customs Enforcement (ICE) and the United States Department of Homeland Security (DHS) ("Defendants").

2. ALC seeks records related to pending state legislation of significant public concern: the California TRUST Act.

1 3. The TRUST Act aims to limit the involvement of California law enforcement
2 agencies in federal immigration enforcement. It would alter the impact of California's
3 participation in ICE's "Secure Communities" deportation program, through which ICE: (1)
4 requires local police to check arrestees' immigration status and (2) issues "immigration
5 detainers," which request that police detain individuals suspected of being deportable for transfer
6 to ICE. Opponents of the program argue that it results in the deportation of individuals who pose
7 no public safety concern, threatens public safety by destroying trust between police and
8 immigrant communities, drains local resources, and encourages racial profiling. The TRUST Act
9 would address these concerns by limiting compliance with immigration detainers to individuals
10 who have been convicted of serious or violent felonies.

11 4. Last summer, the California Senate and Assembly passed the TRUST Act by
12 significant majorities. Governor Brown subsequently vetoed the bill, but declared his intention to
13 work with the legislature and stakeholders on an amended version during the 2013 legislative
14 session. The TRUST Act was reintroduced in the California Assembly on December 3, 2012.

15 5. Prior to Governor Brown's veto, his office communicated privately with ICE
16 about the TRUST Act.

17 6. Shortly after the TRUST Act was reintroduced, ICE, Governor Brown, and the
18 California Sheriff's Association—the only organizational opponent of the TRUST Act—met
19 behind closed doors and discussed the TRUST Act, immigration detainers, and the Secure
20 Communities program. This meeting was not open to the public.

21 7. ICE has a history of misrepresenting facts about the Secure Communities program
22 to the public and to state and local officials. ICE also has a history of attempting to influence
23 state and local officials who seek to limit compliance with Secure Communities.

24 8. ALC made its FOIA request on December 21, 2012, seeking information about
25 communications between ICE, the Governor's office, the California Sheriff's Association, and
26 others regarding the TRUST Act, immigration detainers, and the Secure Communities program
27 in order to inform the public debate on the TRUST Act.
28

JURISDICTION, VENUE, AND INTRADISTRICT ASSIGNMENT

PARTIES

11. Founded in 1972, ALC is the nation's first legal and civil rights organization serving the low-income Asian Pacific American communities. Its official and principal place of business is 55 Columbus Avenue, San Francisco, California 94111. ALC advocates for immigration reform, immigrants' rights, criminal justice system reform, national security reform, and other social justice issues, with a specific focus on low-income, immigrant, and underserved communities. ALC aims to create an informed and educated Asian and Pacific Islander community. Additionally, ALC works closely on immigration and public safety issues with advocacy organizations based in other communities, and provides educational materials and resources to the general public and to diverse immigrant communities on immigrant rights. To

1 this end, it regularly publishes and widely disseminates fact sheets, reports, guides, bulletins,
 2 know-your-rights handbooks, short films, and a blog. ALC also regularly conducts know-your-
 3 rights presentations to the public and distributes information broadly to the public via print and
 4 electronic media. The information disseminated by ALC includes information about immigration
 5 reform and immigrants' rights in general, as well as information about Secure Communities, ICE
 6 detainer requests, the TRUST Act, and police enforcement of immigration law specifically. The
 7 negative effects of ICE's Secure Communities deportation program and California law
 8 enforcement agencies' voluntary compliance with immigration detainers significantly impact and
 9 interest the community ALC serves. ALC is an organizational co-sponsor of the TRUST Act.

10 12. Defendant DHS is an agency of the United States within the meaning of 5 U.S.C.
 11 § 552(f)(1). DHS has possession of, and control over, the information sought by ALC pursuant to
 12 the FOIA.

13 13. Defendant ICE is a component of DHS and is an agency of the United States
 14 within the meaning of 5 U.S.C. § 552(f)(1). ICE is responsible for, *inter alia*, the interior
 15 enforcement of federal immigration law. ICE has possession of, and control over, the
 16 information sought by ALC pursuant to the FOIA.

17 FACTUAL ALLEGATIONS

18 **I. ICE's Secure Communities Program has met with Strong Opposition from Elected** 19 **Officials, Law Enforcement Officers, and the Public**

20 14. ICE began implementing Secure Communities nationally in 2008. The program
 21 requires local law enforcement agencies to share the fingerprints of arrestees with ICE. Upon
 22 receiving the prints, ICE initiates an investigation into the immigration status of the arrested
 23 individual. If ICE suspects the individual may be deportable, it sends an immigration detainer,
 24 which is a request that the local agency detain the individual for 48 hours, excluding weekends
 25 and holidays, beyond his or her release date, largely at local expense, to facilitate transfer to ICE.
 26 ICE has taken the questionable position that this fingerprint-sharing is mandatory. However,
 27 compliance with immigration detainers is voluntary.
 28

15. ICE's original stated mission for Secure Communities was to target individuals with serious felony convictions, but the program casts a much wider net. Over half of those deported have either no, or only minor, misdemeanor convictions.¹

16. The Governors of New York, Illinois, and Massachusetts, as well as the governing bodies of the nation's largest cities and counties, have formally objected to the imposition of Secure Communities in their jurisdictions.² In California, the police chiefs of Los Angeles and San Francisco have gone on record opposing the program and a number of local governments have passed resolutions condemning it.³

17. A major concern has been Secure Communities' impact on public safety. DHS' own Secure Communities Task Force found that the program may encourage distrust between police and immigrant communities, making immigrant crime victims and witnesses reluctant to cooperate with police and producing "a harmful impact on the ability of the police to . . . engage in community policing, thereby negatively impacting public safety and possibly national security."⁴

¹ See U.S. Immigration and Customs Enforcement, *Secure Communities IDENT/IAFIS Interoperability Monthly Statistics through February 28, 2013*, available at http://www.ice.gov/doclib/foia/sc-stats/nationwide_interop_stats-fy2013-to-date.pdf.

² See, e.g., Letter from Governor Pat Quinn to Mark Rapp, Acting Assistant Direct of Secure Communities, May 4, 2011, available at http://epic.org/privacy/secure_communities/sc_ill.pdf; Press release, *Governor Cuomo suspends Participation in Federal Secure Communities Program*, June 1, 2011, available at <http://www.governor.ny.gov/press/06012011FederalSecureCommunitiesProgram>.

³ See, e.g., Joel Rubin and Andrew Blankstein, *Chief Beck eases policy on illegal immigrant deportation*, Los Angeles Times, Oct. 4, 2012, available at <http://articles.latimes.com/2012/oct/04/local/la-me-lapd-immigration-20121004>; Letter from Gregory P. Suhr, Chief of Police to Assemblymember Ammiano, August 27, 2012, available at <http://www.lccr.com/assets/press-releases/PoliceChiefSuhrLtrSupportTRUST.pdf>.

⁴ Homeland Security Advisory Council, Task Force on Secure Communities, *Findings and Recommendations*, September 2011, available at <http://www.dhs.gov/xlibrary/assets/hsac-task-force-on-secure-communities-findings-and-recommendations-report.pdf>.

18. Another concern has been the mistaken detention of U.S. citizens and lawful immigrants. It is estimated that approximately 3,600 U.S. citizens were apprehended by ICE through Secure Communities from its inception to April 2011.⁵

19. Cost has been another issue. Secure Communities does not provide any direct reimbursement to localities for the costs of participation, including extended detention time and the administrative costs of tracking and responding to immigration detainers. As a result, California taxpayers spend an estimated \$65 million per year to detain immigrants for ICE.⁶

20. In response to these concerns, a number of cities and counties—including New York City; Washington, DC; Cook County, IL; and Santa Clara County, CA—have passed local ordinances limiting compliance with immigration detainers. At the state level, since the TRUST Act was introduced in California, similar bills, also called “TRUST Acts” have been introduced in Massachusetts, Connecticut, Colorado, Florida, and Washington.

II. ICE has Consistently Provided Misleading Information About Secure Communities to State and Local Officials and has Attempted to Influence State and Local Policies to Limit the Program’s Impact

21. ICE has consistently provided misleading information about Secure Communities, misrepresenting both the nature and scope of the program. ICE described Secure Communities first as voluntary and then, later, stated that it was mandatory. In communications with state and local officials, ICE stated that Secure Communities would focus on individuals convicted of serious crimes. At the same time, however, ICE used the program to deport tens of thousands of individuals with no criminal convictions. The miscommunication caused outrage in Congress,

⁵ See Aarti Kohli, Peter L. Markowitz and Lisa Chavez, *Secure Communities by the Numbers: An Analysis of Demographics and Due Process*, October 2011, available at http://www.law.berkeley.edu/files/Secure_Communities_by_the_Numbers.pdf.

⁶ Judith A. Greene, *The Cost of Responding to Immigration Detainers*, Justice Strategies, August 22, 2012, available at <http://www.justicestrategies.org/publications/2012/cost-responding-immigration-detainers-california>.

1 with Congresswoman Zoe Lofgren declaring it “unacceptable for government officials to
2 essentially lie to local governments, Members of Congress, and the public.”⁷

3 22. ICE has previously attempted to exercise behind-the-scenes pressure to influence
4 state and local policies that, like the TRUST Act, limit local responses to immigration detainer
5 requests. For example, in response to a Cook County, Illinois ordinance that prohibits local
6 officials from complying with immigration detainer requests, ICE Director John Morton wrote to
7 the Cook County Board President offering to pay for the cost of detaining people in an attempt to
8 persuade the Board to rescind its ordinance.⁸

9
10 **III. The TRUST Act Seeks to Alleviate the Harmful Impact of the Secure Communities**
11 **Program in California**

12 23. The TRUST Act aims to alleviate the harmful impact of California’s participation
13 in the Secure Communities program and to restore trust between police and the communities
14 they serve.

15 24. The TRUST Act was originally introduced in the California Assembly on
16 February 18, 2011. It was approved by the California Senate on July 5, 2012, approved by the
17 California Assembly on August 24, 2012, vetoed by California Governor Jerry Brown on
18 September 30, 2012, and reintroduced in the California Assembly on December 3, 2012. A.B.
19 1081, 2011–12 Leg., Reg. Sess. (Cal. 2012) (reintroduced as A.B. 4, 2013–14 Leg., Reg. Sess.
20 (Cal. 2013)).

21 25. The current version of the TRUST Act provides that local officials may detain
22 individuals pursuant to immigration detainers only if they have been convicted of a serious or
23

24 ⁷ *Congressmember Asks Feds To Investigate Misconduct of Immigration Officials*, Deportation
25 Nation (April 29, 2011), <http://www.deportationnation.org/2011/04/congressmember-asks-feds-to-investigate-misconduct-of-immigration-officials/>.

26 ⁸ Letter from John Morton, Director, Immigration and Customs Enforcement to Toni
27 Preckwinkle, President, Cook County Board of Commissioners, February 13, 2012, *available at*
28 <http://www.immigrationpolicy.org/sites/default/files/docs/Morton-Letter-to-Preckwinkle-02-13-12.pdf>.

1 violent felony. The intent of the bill is to set a clear standard for local governments, to return
 2 Secure Communities to its original stated purpose of focusing on individuals convicted of serious
 3 and violent crimes, and to restore trust between police and communities.

4
 5 **IV. ICE Communicated Privately with Governor Brown and the California Sheriff's**
 6 **Association About the TRUST Act**

7 26. On the evening of September 30, 2012, Governor Brown vetoed the TRUST Act.

8 27. In meetings with advocates, Governor Brown's staff confirmed that the
 9 Governor's office had communicated with ICE officials about the TRUST Act in advance of the
 10 Governor's veto.

11 28. At the time of his veto of the TRUST Act, Governor Brown expressed his intent
 12 to work with the legislature and stakeholders to address his concerns with the TRUST Act,
 13 stating that he would "work with the Legislature to see that the bill is corrected forthwith."⁹

14 29. The TRUST Act was reintroduced in the California Assembly on December 3,
 15 2012.

16 30. Shortly after the TRUST Act was reintroduced, ICE officials met with Governor
 17 Brown and the California Sheriff's Association to discuss the TRUST Act, immigration
 18 detainees, and Secure Communities.¹⁰ The meeting was not open to the public.

19 31. The California Sheriff's Association has been the only organizational opponent of
 20 the TRUST Act.

21
 22
 23 ⁹ Governor's AB 1081 Veto Message, Sept. 30, 2012 *available at* [http://gov.ca.gov/docs/AB](http://gov.ca.gov/docs/AB_1081_Veto_Message.pdf)
 24 [_1081_Veto_Message.pdf](http://gov.ca.gov/docs/AB_1081_Veto_Message.pdf).

25 ¹⁰ Albert Sabaté, *Legitimacy of Secure Communities Program Weakened*, ABC Univision, Dec.
 26 12, 2012, *available at* [http://abcnews.go.com/ABC_Univision/News/legitimacy-secure-](http://abcnews.go.com/ABC_Univision/News/legitimacy-secure-communities-program-weakened/story?id=17921778#.UV79I6UaxUQ)
 27 [communities-program-weakened/story?id=17921778#.UV79I6UaxUQ](http://abcnews.go.com/ABC_Univision/News/legitimacy-secure-communities-program-weakened/story?id=17921778#.UV79I6UaxUQ); David Olson, *Talks held*
 28 *on revising immigration-hold policy*, The Press-Enterprise, Dec. 7, 2012, *available at*
[http://www.pe.com/local-news/riverside-county/riverside/riverside-headlines-index/20121207-](http://www.pe.com/local-news/riverside-county/riverside/riverside-headlines-index/20121207-legal-talks-held-on-revising-immigration-hold-policy.ece)
[legal-talks-held-on-revising-immigration-hold-policy.ece](http://www.pe.com/local-news/riverside-county/riverside/riverside-headlines-index/20121207-legal-talks-held-on-revising-immigration-hold-policy.ece).

32. On April 9, 2013, the TRUST Act will be voted on by the California State Assembly's Committee on Public Safety.

33. The deadline for the California Assembly to vote on the TRUST Act is May 31, 2013.¹¹

V. There is Ongoing Public Interest in the TRUST Act

34. The TRUST Act and its impact on the Secure Communities program and the use of ICE detainers have received extensive media coverage and have been debated on in the editorial pages of the country's major newspapers, including *The Los Angeles Times*, *The New York Times*, *USA Today*, the Associated Press, and Reuters.¹² There is continuing public interest in the reintroduced version of the TRUST Act.¹³

35. In order to inform the ongoing public debate on the TRUST Act, ALC intends to disseminate any information received as a result of its FOIA request to the public at large. Specifically, ALC will immediately analyze and publish the information through its press releases, newsletters, website, blog, and Twitter and Facebook accounts. ALC will also publicize

¹¹ California State Assembly, 2013 Legislative Deadlines, *available at* <http://assembly.ca.gov/legislativedeadlines>.

¹² See, e.g., Editorial, *Secure Communities: The Trust Act Fix*, L.A. Times, July 13, 2012, *available at* <http://articles.latimes.com/2012/jul/13/opinion/la-ed-secure-communities-trust-act-20120713>; Editorial, *California's Trust Act*, NY Times, June 21, 2012, *available at* <http://www.nytimes.com/2012/06/22/opinion/californias-trust-act.html>; Editorial, *Trust, Immigrants and Gov. Brown*, NY Times, Sept. 2, 2012, *available at* <http://www.nytimes.com/2012/09/03/opinion/trust-immigrants-and-gov-brown.html>.

¹³ Leslie Berestein Rojas, *California's 'anti-Arizona' TRUST Act is back for another round*, Multi American Blog, Southern California Public Radio, Dec. 3, 2012, *available at* <http://www.scpr.org/blogs/multiamerican/2012/12/03/11368/californias-anti-arizona-trust-act-back-another-ro/>; *Local police can decide whether to hold illegal immigrants*, L.A. Times, Dec. 4, 2012, *available at* <http://latimesblogs.latimes.com/lanow/2012/12/local-police-can-decide-whether-to-hold-illegal-immigrants.html>; Daniel C. Vock, *Legislatures consider limits on prisoner deportations through Secure Communities*, Sacramento Bee, Mar. 30, 2013, *available at* <http://www.sacbee.com/2013/03/30/5304559/legislatures-consider-limits-on.html>; Brian Day, *Easter Sunday rally in Baldwin Park seeks immigration reform*, San Gabriel Valley Tribune, Mar. 31, 2013 *available at* http://www.sgvtribune.com/news/ci_22912666/easter-sunday-rally-baldwin-park-seeks-immigration-reform.

the information through know-your-rights presentations and through its vast network of supporting organizations across the nation.

VI. ALC's FOIA Request

36. On December 21, 2012, ALC sent a request via email and postal mail to ICE, pursuant to the FOIA, 5 U.S.C. § 552, seeking the production of records pertaining to: (1) communications regarding California's TRUST Act from February 18, 2011 to the present (hereinafter "Part I"); (2) communications regarding the Secure Communities program and ICE detainers (also known as ICE holds) in California during the same period (hereinafter "Part II"). (Collectively referred to as the "Request.") A copy of the Request is attached as Exhibit "A."

37. ALC detailed the records sought by enumerating the content of communications sought, the types of communications sought, and the entities between which communications were sought.

38. ALC also requested expedited processing of its FOIA request pursuant to 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. § 5.5 because there is a compelling and immediate need for the information sought and because ALC is "a person primarily engaged in disseminating information."

39. ALC supported its claim for urgency by detailing the intense media and public attention surrounding the TRUST Act at both the state and national level; by describing the purpose of the TRUST Act; by describing ICE's previous efforts to mislead Californians regarding Secure Communities; by describing the public's need for timely access to the requested documents for an active bill under consideration by the California legislature; and by describing ALC's intent to disseminate all information obtained through the request to the public, supporting this claim with details about ALC's website and regular print and electronic publication of factsheets, briefing guides, and other materials.

40. ALC requested a fee waiver on two grounds: first, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) because the information ALC seeks "is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the

[Plaintiff's] commercial interest," and second, pursuant to DHS regulations 6 C.F.R. § 5.11(d)(1), due to ALC's status as a representative of the news media.

41. ALC supported its claim for a fee waiver by reiterating the intense media and public attention on the TRUST Act, the ability of ALC to disseminate the information gained from the request to the general public, and ALC's plan to disseminate records disclosed as part of the FOIA request. ALC also stated its lack of a commercial interest in the records as a not-for-profit organization.

42. ALC sufficiently described the records sought to meet the statutory requirements of a request for records pursuant to the FOIA and DHS regulations.

43. ALC is entitled to expedited processing of its request.

44. ALC is entitled to a fee waiver because of the public interest nature of the request and because ALC is a representative of the news media.

VII. Defendants' Acknowledgment and Initial Response

45. On January 8, 2013, ALC received an "acknowledgement" and "initial response" letter from Catrina M. Pavlik-Keenan dated January 3, 2013, assigning ALC's FOIA request Case Number 2013FOIA08088. A copy of this letter is attached as Exhibit "B."

46. The letter denied ALC's request for expedited processing on the grounds that ALC had not "provided any evidence that information dissemination is [its] main professional activity" and that ALC had not "adequately demonstrated a particular urgency to inform the public regarding the subject matter of [its] request, beyond the public's general right to know about government activity."

47. The letter also denied ALC's request for representative of the news media status for purposes of a fee waiver on the grounds that ALC had not "presented a convincing argument that The Asian Law Caucus (ALC) is an entity organized and operated to publish or broadcast news to the public."

48. The letter further denied ALC's request for a fee waiver on the grounds that "ALC has failed to provide a convincing argument that the disclosure of all communications

concerning . . . the TRUST Act, ICE holds/detainers in California, and the Secure Communities Program in California[] would significantly contribute to the public’s understanding of the government’s operations or activities.”

49. The letter stated that ALC’s request was “overly broad” and “not perfected.” The letter stated that potentially responsive records would be maintained at ICE offices located in “California, Washington, D.C., and potentially other ICE Offices located throughout the United States and overseas.” It invited ALC to schedule an appointment to speak with ICE FOIA staff to “perfect” the request.

50. The letter also stated that if ALC did not submit an amended request within fifteen (15) business days of the date on the letter, ICE would consider ALC’s request withdrawn. Neither the FOIA nor DHS regulations impose this deadline.

51. The letter served partially to fulfill ICE’s obligation pursuant to 6 C.F.R. § 5.6(a) to acknowledge receipt of ALC’s FOIA requests.

52. The letter failed to grant or deny ALC’s request for records pursuant to 6 C.F.R. §§ 5.6(b)–(c) and therefore did not constitute an agency response for purposes of satisfying ICE’s duty to make and communicate a determination on ALC’s FOIA request within twenty (20) days of receipt pursuant to 5 U.S.C. § 552(a)(6)(A)(i).

VIII. ALC’s Voluntary Efforts to Narrow the Request for Information and Defendants’ Delay Tactics and Non-Responses

53. On January 23, 2013, ALC’s counsel left a voicemail for ICE FOIA Officer Mark Graff requesting to schedule a phone call regarding ALC’s Request. Although not required to by the FOIA, ALC contacted ICE to hasten processing of ALC’s request for documents.

54. On January 23, 2013, Mr. Graff returned ALC’s counsel’s voicemail. He spoke to UC Irvine Immigrant Rights Clinic Certified Law Student Jennifer Chin regarding the Request. Mr. Graff indicated that his office interpreted the Request to require an overly broad search because the request lacked delineation of which ICE “components,” meaning departments within ICE, were likely to house responsive records. He recommended that ALC narrow the Request to

1 exclude ICE components that ALC would not be interested in searching. Mr. Graff agreed to
2 make himself available for a call directly with ALC on Friday, January 25, at 12:00pm PST to
3 repeat ICE's recommendations regarding the narrowing of the Request.

4 55. On January 25, at 12:00pm PST, at the appointed time, ALC and ALC's counsel
5 called Mr. Graff. Mr. Graff did not answer the phone, and did not return ALC's voicemail prior
6 to ICE's agency-imposed deadline for ALC to submit an amended request.

7 56. Although not required to do so, on Friday, January 25, 2013, ALC submitted an
8 amended FOIA request, via email and overnight mail, incorporating Mr. Graff's
9 recommendations. (Hereinafter, the "Amended Request"). A copy of this letter is attached as
10 Exhibit "C."

11 57. In order to accelerate ALC's critical request for documents, the Amended Request
12 narrowed the scope of the Request in each of the ways recommended by ICE's acknowledgment
13 letter and by Mr. Graff. First, ALC limited its request geographically, seeking only documents
14 located in ICE's national headquarters and ICE's California offices. Second, ALC limited its
15 request for communications to documents maintained by seven enumerated ICE components.
16 Finally, though not requested to do so, ALC further limited its request by explaining that, while
17 it sought records about immigration detainers in general, including records about immigration
18 detainer policy, it did not seek any records regarding specific individuals held on immigration
19 detainers.

20 58. On January 29, 2013, ICE Deputy FOIA Officer Ryan Law emailed Ms. Chin
21 requesting to schedule a phone call to discuss the scope of the Amended Request. A copy of this
22 email is attached as Exhibit "D."

23 59. On February 7, 2013, ALC's Counsel discussed the Amended Request by phone
24 with Mr. Law. Mr. Law confirmed that his office considered Part I of ALC's request, regarding
25 communications involving the TRUST Act, sufficiently detailed to begin a search for documents.
26 However, Mr. Law requested that ALC further narrow that Part of its request beyond the
27 limitations initially suggested by Mr. Graff by removing the "Office of Professional
28 Responsibility" and the "Office of Detention Policy and Planning" from the enumerated list of

1 ICE components requested to be searched. Mr. Law stated that these offices, from his
2 experience, would not likely maintain records that would be responsive to the Amended Request.

3 60. Mr. Law also agreed to add the “Office of Public Affairs” to the list of ICE
4 components to be searched.

5 61. Mr. Law stated that ICE would immediately begin searching for records
6 responsive to Part I of ALC’s Amended Request, and agreed to release responsive records on a
7 rolling basis as searches for the records were completed.

8 62. Mr. Law also stated that if ALC submitted an additional statement of the public
9 interest nature of ALC’s request regarding the TRUST Act, the ICE FOIA office would
10 reconsider a “conditional fee waiver.” Mr. Law stated that the reconsideration process would be
11 separate and apart from the formal administrative appeal process for ICE’s initial January 3,
12 2013 fee waiver denial.

13 63. With respect to Part II of ALC’s request for documents, regarding the Secure
14 Communities Program and ICE detainers or holds in California, however, Mr. Law requested
15 that ALC further narrow the scope of its request. Again, Mr. Law’s suggestions for narrowing
16 the request went beyond the suggestions initially made by Mr. Graff, with which ALC had
17 complied in its Amended Request. Mr. Law requested that ALC either: (1) provide ICE with the
18 purpose of its request so that ICE may better tailor a responsive search; or (2) provide ICE with
19 suggested combinations of search terms that would assist ICE in identifying responsive records.

20 64. On February 8, 2013, Mr. Law sent an email to ALCs counsel memorializing the
21 February 7 phone conversation. A copy of this email is attached as Exhibit “E.”

22 65. In both the February 7 phone call and the February 8 email, Mr. Law failed to
23 notice applicable fees, as required for a grant of a request under 6 C.F.R. § 5.6(b).

24 66. On February 12, 2013, Ms. Chin emailed Mr. Law to request confirmation
25 regarding Mr. Law’s offer to reconsider a conditional fee waiver, as well as clarification as to
26 what “conditional” meant. A copy of this email is attached as Exhibit “F.”
27
28

1 67. ALC received no response from Mr. Law until February 20, 2013, when Mr. Law
2 emailed Ms. Chin to apologize for his lack of response. He stated that he would attempt to
3 respond by February 22, 2013. A copy of this email is attached as Exhibit "G."

4 68. Mr. Law did not communicate with ALC on February 22, 2013. That day, ALC
5 sent a letter to Mr. Law via email. The letter reiterated the urgency of ALC's request and
6 responded to each of the points raised by Mr. Law in the February 7 phone conversation. A copy
7 of this letter is attached as Exhibit "H."

8 69. Although not required by the FOIA to do so, ALC agreed in its letter to remove
9 the Office of Professional Responsibility and the Office of Detention Policy and Planning from
10 the scope of its Amended Request, as requested by Mr. Law.

11 70. Although not required by the FOIA to do so, ALC also provided an additional
12 statement of the public interest nature of its request for fee waiver re-consideration, as requested
13 by Mr. Law.

14 71. Although not required by the FOIA to do so, ALC also provided additional
15 clarification to Mr. Law regarding the purpose of ALC's request for documents as requested by
16 Mr. Law.

17 72. ALC further requested that ICE complete the rolling production of documents
18 responsive to ALC's Amended Request by March 15, 2013.

19 73. More than six (6) weeks have elapsed since ALC's February 22, 2013 letter to
20 Mr. Law. To date, ALC has not received any response or any requested documents.

21 74. Since receiving ALC's FOIA request on December 21, 2012, ICE has engaged in
22 a series of demands to ALC to narrow the scope of records sought under its request. Although
23 not required to comply with these demands, ALC has complied with each demand in order to
24 expedite ICE's search and production of the urgently-needed requested documents.

25 75. ICE has not acted on any substantive portion of ALC's request. It has neither
26 denied nor complied with ALC's substantive request for documents, and is continuing to delay
27 production of responsive documents.
28

76. As to both Parts I and II of ALC's request, none of the communications received from ICE to date constitute either an official grant or denial of ALC's request, as required by the FOIA within twenty (20) business days of ICE's receipt of a request for information under the FOIA. 5 U.S.C. § 552(a)(6)(A)(i).

77. ALC's administrative remedies are exhausted by reason of ICE's failure to meet the statutory time limits of the FOIA.

78. ICE's failure to meet the statutory time limits of the FOIA entitles ALC to waiver of fees under 5 U.S.C. § 552(a)(4)(A)(viii).

79. Even if any of the communications received from ICE regarding ALC's request constitute a grant of the request, ICE has not met its obligation pursuant to 5 U.S.C. § 552(a)(6)(C)(i) and 6 C.F.R. § 5.6(b) to produce responsive records promptly.

80. As to both Parts I and II of ALC's request, ALC has no adverse determination to appeal and has no administrative remedies to pursue in order to compel ICE production of the requested documents to which ALC has a legal right under the FOIA.

81. ICE has wrongfully failed to make reasonable efforts to search for responsive records.

82. ICE has wrongfully failed to release responsive records to ALC.

83. ICE has wrongfully and unreasonably delayed release of responsive records to ALC by making repeated and unwarranted requests for further clarification from ALC, by failing to respond to ALC's request for clarification and confirmation, and by failing to promptly release responsive documents.

IX. ALC's Administrative Appeal

84. ALC timely appealed ICE's January 3, 2013 denials of expedited processing and a fee waiver to DHS on February 26, 2013. A copy of this administrative appeal, with its original exhibits omitted, is attached as Exhibit "I."

85. DHS acknowledged receipt of ALC's administrative appeal in a letter dated March 4, 2013, assigning it tracking number OPLA 13-730. A copy of this letter is attached as Exhibit "J."

86. In a letter dated March 15, 2013, DHS affirmed ICE's denial of ALC's request for a fee waiver on the grounds that: (1) with respect to its request under 5 U.S.C. § 552(a)(4)(A)(iii), ALC's request "fail[ed] to specify the ability of the requester to disseminate the information or the intended method of dissemination" and (2) that ALC does not qualify as a representative of the news media because it is not an entity organized and operated to publish or broadcast news. A copy of this letter is attached as Exhibit "K."

87. DHS affirmed ICE's denial of expedited processing on the ground that ALC is not "primarily engaged in disseminating information."

88. DHS' decision states that it "is the final action of the U.S. Immigration and Customs Enforcement concerning your FOIA/PA request."

89. DHS improperly denied ALC's request for a fee waiver under 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k)(2).

90. DHS improperly denied ALC's request for a fee waiver as a representative of the news media.

91. DHS improperly denied ALC's request for expedited processing.

92. ALC exhausted its administrative remedies for the denials of a fee waiver and expedited processing by timely filing administrative appeals and receiving a final, adverse agency decision.

93. ALC has a statutory right to the records it seeks on an expedited basis and without charge.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Violation of the FOIA for Wrongful Withholding of Agency Records Sought by Plaintiff's FOIA

Request

1 94. Plaintiff repeats and re-alleges paragraphs 1–93 above.

2 95. Plaintiff has a legal right to timely production of the records requested by
3 Plaintiff’s December 21, 2012 FOIA request under the FOIA pursuant to 5 U.S.C. § 552 and the
4 DHS regulations promulgated thereunder, 6 C.F.R. §§ 5.1-5.11.

5 96. Defendant ICE’s failure to disclose the records requested by Plaintiff’s December
6 21, 2012 FOIA request violates Plaintiff’s and the public’s legal rights, pursuant to 5 U.S.C. §
7 552, to the disclosure of the agency records.

8
9 SECOND CLAIM FOR RELIEF

10 Violation of the FOIA for Failure to Grant Expedited Processing of Plaintiff’s FOIA Request

11 97. Plaintiff repeats and re-alleges paragraphs 1–96 above.

12 98. Plaintiff has a legal right to expedited processing under the FOIA pursuant to 5
13 U.S.C. § 552(a)(6)(E) and the DHS regulations promulgated thereunder, 6 C.F.R. §5.5(d).

14 99. Defendants’ failure to grant expedited processing violates 5 U.S.C. § 552(a)(6)(E)
15 and the DHS regulations promulgated thereunder, 6 C.F.R. §5.5(d).

16
17 THIRD CLAIM FOR RELIEF

18 Violation of the FOIA for Failure to Grant a Fee Waiver Pursuant to 5 U.S.C. §
19 552(a)(4)(A)(ii)(II)

20 100. Plaintiff repeats and re-alleges paragraphs 1–99 above.

21 101. Plaintiff has a legal right to be classified as a “representative of the news media”
22 for purposes of assessing fees under the FOIA pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) and the
23 DHS regulations promulgated thereunder, 6 C.F.R. § 5.11(b)(6).

24 102. Defendants’ failure to classify Plaintiff as a representative of the news media for
25 purposes of assessing fees associated with Plaintiff’s FOIA request violates 5 U.S.C. §
26 552(a)(4)(A)(ii)(II) and the DHS regulations promulgated thereunder, 6 C.F.R. § 5.11(b)(6).

FOURTH CLAIM FOR RELIEF

Violation of the FOIA for Failure to Grant a Fee Waiver Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii)

103. Plaintiff repeats and re-alleges paragraphs 1–102 above.

104. Plaintiff has a legal right to a waiver of all fees associated with Plaintiff's FOIA request under the FOIA pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) because disclosure of the requested documents is in the public interest. ALC's request is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

105. Defendants' failure to grant Plaintiff a waiver of all fees associated with Plaintiff's FOIA request violates 5 U.S.C. § 552(a)(4)(A)(iii).


REQUESTED RELIEF

Plaintiff respectfully requests that the Court:

- 1) Assume jurisdiction over this matter;
- 2) Declare that Defendants' refusal to disclose the records requested by Plaintiff is unlawful;
- 3) Order Defendants immediately to make a full, adequate, and expedited search for the requested records;
- 4) Order Defendants to produce documents responsive to Plaintiff's FOIA request;
- 5) Order Defendants to engage in expedited processing of Plaintiff's FOIA request;
- 6) Order Defendants, upon completion of expedited processing, to disclose the requested records in their entirety and make copies available to Plaintiff no later than ten days after the Court's order;
- 7) Enjoin Defendant from assessing fees or costs for the processing of Plaintiff's FOIA Request pursuant to 5 U.S.C. § 552(a)(4)(A)(viii), 5 U.S.C. § 552(a)(4)(A)(ii)(II), and 5 U.S.C. § 552(a)(4)(A)(iii).
- 8) Provide for expeditious proceedings in this action pursuant to 28 U.S.C. § 1657;
- 9) Award Plaintiff its costs and reasonable attorney fees pursuant to 5 U.S.C. § 552(a)(4)(E); and

1 10) Grant such other relief as the Court may deem just and proper.
2
3

4 Respectfully submitted this 9th day of April, 2013.
5

6 
7 JESSICA KARP (CA. BAR NO. 277347)
8 UC Irvine Immigrant Rights Clinic
9 University of California, Irvine School of
10 Law
11 c/o National Day Laborer Organizing
12 Network
13 675 S. Park View St.
14 Los Angeles, CA 90057
15 Telephone: (213) 380-2214
16 Facsimile: (213) 380-2787
17 jkarp@ndlon.org

14 On the Complaint:

15 Jennifer Chin
16 J. Ryan Graham
17 Cristina Salvato
18 Law Student Interns
19
20
21
22
23
24
25
26
27
28

EXHIBIT TABLE OF CONTENTS

EXHIBIT A	Plaintiff Asian Law Caucus' (ALC) December 21, 2012 Freedom of Information Act Request to Defendant U.S. Immigration and Customs Enforcement (ICE)
EXHIBIT B	ICE's January 3, 2013 Acknowledgment and Initial Response Letter to ALC
EXHIBIT C	ALC's January 25, 2013 Amended Freedom of Information Act Request to ICE
EXHIBIT D	ICE Deputy FOIA Officer Ryan Law's January 29, 2013 Email to ALC
EXHIBIT E	ICE Deputy FOIA Officer Ryan Law's February 8, 2013 Email to ALC
EXHIBIT F	ALC's February 12, 2013 Email to ICE
EXHIBIT G	ICE's February 20, 2013 Email to ALC
EXHIBIT H	ALC's February 22, 2013 Letter to ICE
EXHIBIT I	ALC's February 26, 2013 Administrative Appeal to Defendant U.S. Department of Homeland Security(DHS) (exhibits omitted)
EXHIBIT J	DHS's March 4, 2013 Acknowledgment of ALC's Appeal
EXHIBIT K	DHS's March 15, 2013 Denial of ALC's Administrative Appeal

EXHIBIT A



December 21, 2012

VIA OVERNIGHT MAIL AND EMAIL

FOIA Office

U.S. Immigration and Customs Enforcement

800 North Capitol St., NW

5th Floor, Suite 585

Washington, DC 20536

ICE-FOIA@ice.dhs.gov

RE: Freedom of Information Act Request

Dear ICE FOIA Unit:

This is a request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 on behalf of the Asian Law Caucus ("Requester"). We ask that you please direct this request to all appropriate offices and departments within the agency.

A. RECORDS REQUESTED

1. We request any and all Records related to communications within ICE, and between ICE and the following persons/entities and categories of persons/entities regarding California's Transparency and Responsibility Using State Tools ("TRUST") Act (passed in the California Senate and Assembly in August 2012 as Assembly Bill 1081 and reintroduced in the Assembly on December 3, 2012 as Assembly Bill 4) from February 18, 2011 to the present:

- a. The Office of California Governor Jerry Brown
- b. The Office of California Attorney General Kamala Harris
- c. The White House
- d. Non-governmental organizations
- e. California law enforcement officials (including the California Sheriff's Association, California Sheriffs, and California Police Chiefs)
- f. Members of the United States Congress
- g. Members of the Press

For each person/entity and category of person/entity, we seek Records of the communications themselves, as well as any other Records related to the communications.

ASIAN LAW CAUCUS
In Defense of Civil Rights

55 Columbus Ave., San Francisco, CA 94111
Direct: (415) 848-7719 / Fax: (415) 896-1702

Website: www.alc.advancingjustice.org / E-mail: angelac@asianlawcaucus.org

2. We request any and all Records related to communications within ICE, and between ICE and the following persons/entities and categories of persons/entities regarding ICE holds (also known as ICE detainers) and/or the Secure Communities Program in California from February 18, 2011 to the present:

- a. The Office of California Governor Jerry Brown
- b. The Office of California Attorney General Kamala Harris
- c. The White House
- d. Non-governmental organizations
- e. California law enforcement officials (including the California Sheriff's Association, California Sheriffs, or California Police Chiefs)
- f. Members of the United States Congress
- g. Members of the press

For each person/entity and category of person/entity, we seek Records of the communications themselves, as well as any other Records related to the communications.

As used herein, the term "Record" includes, but is not limited to, all records or communications preserved in electronic or written form, such as correspondences, text messages, cell phone records, telephone records, emails, documents, data, videotapes, audio tapes, faxes, files, guidance, guidelines, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, legal opinions, protocols, reports, rules, technical manuals, technical specifications, training manuals, studies, or any other Record of any kind.

B. THE REQUESTER

Founded in 1972, the Asian Law Caucus is the nation's first legal and civil rights organization serving the low-income Asian and Pacific Islander (API) communities. The ALC focuses on housing rights, immigration and immigrants' rights, labor and employment issues, voting rights, civil rights and national security, and criminal justice reform. The mission of the Asian Law Caucus is to promote, advance, and represent the legal and civil rights of API communities. Recognizing that social, economic, political and racial inequalities continue to exist in the United States, the Asian Law Caucus is committed to the pursuit of equality and justice for all sectors of our society, with a specific focus directed toward addressing the needs of low-income, immigrant and underserved APIs. The ALC is one of several non-governmental organizational sponsors of the TRUST Act.

C. EXPEDITED PROCESSING

Expedited processing of this request is necessary both because there is a "compelling need" for the information, 5 U.S.C. § 552(a)(6)(E)(i)(I), and because there is "[a]n urgency to inform the public about an actual or alleged federal government activity" and the request is "made by a person primarily engaged in disseminating information." 6 C.F.R. § 5.5.

This request concerns the California TRUST Act. The TRUST Act was approved by the California Assembly and Senate in August 2012, vetoed by the Governor on September 30, 2012, and reintroduced in the California Assembly on December 3, 2012. It is currently the subject of intense media and public attention at both the state and national level.¹ The TRUST Act seeks to restore trust between police and immigrant communities in the wake of the controversial Secure Communities deportation program. Although ICE originally described Secure Communities as a program to target serious criminals, the majority of the over 82,000 Californians deported through the program have either never been convicted of any offense, or have only minor misdemeanor convictions.² As a result of Secure Communities, an arrest for driving without a license can end with the separation of a family, and immigrant communities are reluctant to report crime or cooperate with the police for fear of deportation. The TRUST Act seeks to address these problems by limiting compliance with ICE detainer requests to cases involving serious or violent crimes. Governor Brown has expressed his interest in working with advocates and the Legislature to amend the TRUST Act so that it can be passed into law in 2013.³

The public has a compelling need to know what ICE communicated to California officials and the public regarding the TRUST Act and Secure Communities, the deportation program that provided the impetus for the TRUST Act. ICE has previously provided misleading information to Californians regarding Secure Communities.⁴ ICE continues to put heavy pressure on jurisdictions that have passed policies similar to the TRUST Act.⁵ Given ICE's record, and the importance of this

¹ See, e.g., Araceli Martinez Ortega, *Más presión por el Acta de Confianza*, La Opinion, Nov. 28 2012, available at www.laopinion.com/Mas-presion-por-el-Acta-de-Confianza; Leslie Berestein Rojas, *California's 'anti-Arizona' TRUST Act is back for another round*, KPCC, Dec. 3, 2012, at <http://www.scpr.org/blogs/multiamerican/2012/12/03/11368/californias-anti-arizona-trust-act-back-another-ro/>; Amy Taxin, *Immigrant advocates blast Brown vetoes in Calif.*, Associated Press, Oct. 1, 2012, available at http://hosted2.ap.org/txdam/54828a5e8d9d48b7ba8b94ba38a9ef22/Article_2012-10-01-US-California-Immigrant-Rights/id-cbb8f6ed91394e589005b394e614dda6; Mary Slosson, *California governor vetoes bill curbing deportation checks*, Reuters, Oct. 1, 2012, available at <http://www.reuters.com/article/2012/10/01/us-usa-california-immigration-idUSBRE89004K20121001>; Patrick McGreevy and Anthony York, *Brown acts on driver's license, deportation bills*, Los Angeles Times, Oct. 1, 2012, available at <http://www.latimes.com/news/local/la-me-brown-bills-20121001,0,4581699.story>; *Calif gov. OKs bill on illegal immigrant licenses*, USA Today, Oct. 1, 2012, available at <http://www.usatoday.com/story/news/nation/2012/10/01/calif-gov-oks-bill-on-illegal-immigrant-licenses/1605291/>; Op-ed, *Cardinal Mahony: Yes to the TRUST Act*, Los Angeles Times, Sept. 28, 2012; Lawrence Downes, *Gov. Brown Should Sign the Trust Act*, New York Times, Sept. 26, 2012, available at <http://takingnote.blogs.nytimes.com/2012/09/26/gov-brown-should-sign-the-trust-act/>.

² See Secure Communities Nationwide Interoperability Statistics, available at http://www.ice.gov/doclib/foia/sc-stats/nationwide_interop_stats-fy2012-to-date.pdf

³ See AB 1081 Veto Message, available at http://gov.ca.gov/docs/AB_1081_Veto_Message.pdf; see also Amy Taxin, *Immigrant advocates blast Brown vetoes in Calif.*, supra note 1.

⁴ See *NDLON v. ICE*, 811 F. Supp. 2d 713, 742 (S.D.N.Y. 2011) (finding “ample evidence that ICE and DHS have gone out of their way to mislead the public about Secure Communities”); compare Memorandum of Agreement between DHS, ICE, and California Dep't of Justice, available at http://www.ice.gov/doclib/foia/secure_communities-moa/california-sc-moa.pdf (describing Secure Communities as “a comprehensive ICE initiative . . . to identify, detain, and remove from the United States aliens who have been convicted of serious offenses”) with Secure Communities Nationwide Interoperability Statistics, available at http://www.ice.gov/doclib/foia/sc-stats/nationwide_interop_stats-fy2012-to-date.pdf (showing that over half of all Californians deported through Secure Communities had either no criminal history or only misdemeanor convictions).

⁵ See Elise Foley, *TRUST Act Vetoed: California Gov. Jerry Brown Calls Limits on Immigration Enforcement 'Flawed'*, Huffington Post, Oct. 1, 2012, available at http://www.huffingtonpost.com/2012/10/01/trust-act-veto-jerry-brown_n_1928444.html

issue to Californians, there is a compelling need for public oversight of communications between ICE and California officials regarding the TRUST Act. This need is exactly what the FOIA was designed to vindicate.⁶

It is urgent that Requester obtains the requested information in a timely fashion. Assemblymember Ammiano reintroduced the TRUST Act on December 3, 2012, and Governor Brown has indicated that “He is willing to work with stakeholders to address major concerns and improve [the bill].”⁷ Requester needs prompt access to the requested documents in order to ensure the public’s ability participate in the on-going work on this bill in an informed manner.

Requester will disseminate all information obtained through this request to the public. Indeed, Requester maintains a website that receives many visits, analyzes public records regarding ICE holds and Secure Communities, and widely publishes and disseminates that information to the press and to the public.⁸

D. FEE WAIVER

Requester is entitled to a waiver of all costs because disclosure of the Records sought “is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). Requester is also entitled to a waiver of all costs because it is a representative of the news media. 6 C.F.R. § 5.11(d)(1).

As described above, the TRUST Act is currently the subject of intense media and public attention, both in California and throughout the country. The records sought here will significantly contribute to public knowledge about the TRUST Act. Requester is well situated to disseminate the information gained from this request to the general public. Requester, a not-for-profit organization, has no commercial interest in these records. As also described above, in accordance with their general practice, Requester plans to disseminate records disclosed as a result of this FOIA request to the public.

E. CERTIFICATION

The Requester certifies that the above information is true and correct to the best of its knowledge. *See* 6 C.F.R. § 5.5(d)(3).

⁶ *See, e.g., NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1979) (affirming the public’s right to be part of “an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed”).

⁷ Amy Taxin, *Immigrant advocates blast Brown vetoes in Calif.*, *supra* note 1.

⁸ For example, the Asian Law Caucus maintains, in partnership with other organizations, a heavily visited website that disseminates information, including information obtained through the FOIA, to the public about the Secure Communities deportation program. *See* www.asianlawcaucus.org. The Asian Law Caucus also regularly publishes factsheets, briefing guides, and other materials, which it disseminates widely to the public through print and online. *See, e.g.,* www.asianlawcaucus.org/publications.

Page 5 of 5, RE: Freedom of Information Act Request

If this request is denied in whole or in part, we ask that you justify all redactions by reference to specific FOIA exemptions. Please specify the search that was undertaken to locate records responsive to this request. We expect you to release all segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information or to deny expedited processing or a waiver of fees.

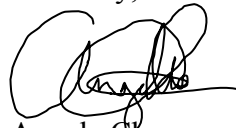
We look forward to your response to our request for expedited processing within ten (10) business days, as required under 5 U.S.C. § 552(a)(6)(E)(ii)(I). Should our request for expedited processing be denied, we expect to receive your response to this request within twenty (20) business days, as required under 5 U.S.C. § 552(a)(6)(A)(I).

If any records are available in electronic form, please furnish them in electronic form. Please furnish all responsive Records to:

Angela F. Chan
Asian Law Caucus
55 Columbus Avenue
San Francisco, CA 94111
Fax: 415.896.1702
Tel: 415.848.7719
E-mail: angelac@asianlawcaucus.org

If you have any questions regarding the processing of this request, please contact Angela Chan at 415.848.7719 or angelac@asianlawcaucus.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'Angela Chan', with a stylized flourish extending from the end.

Angela Chan
Senior Staff Attorney

EXHIBIT B

U.S. Department of Homeland Security
500 12th Street SW, MS 5009
Washington, DC 20536-5009



**U.S. Immigration
and Customs
Enforcement**

January 3, 2013

Ms. Angela Chan
The Asian Law Caucus
55 Columbus Avenue
San Francisco, CA 94111

RE: ICE FOIA Case Number 2013FOIA08088

Dear Ms. Chan:

This letter is in acknowledgement of, and is an initial response to, your Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), dated December 21, 2012. You have requested copies of the following records:

1. Any and all records related to communications (a) within ICE, and (b) between ICE and the following persons/entities and categories of persons/entities regarding California's Transparency and Responsibility Using State Tools ("TRUST") Act...from February 18, 2011 to the present:
 - a. The Office of California Governor Jerry Brown
 - b. The Office of California Attorney General Kamala Harris
 - c. The White House
 - d. Non-governmental organizations
 - e. California law enforcement officials, including
 - i. the California Sheriff's Association
 - ii. California Sheriffs, and
 - iii. California Police Chiefs
 - f. Members of the United States Congress
 - g. Members of the Press
2. Any and all records related to communications (a) within ICE, and (b) between ICE and [the persons/entities enumerated in item 1(a) through 1(g), above] regarding ICE holds (also known as ICE detainees) in California from February 18, 2011 to the present.
3. Any and all records related to communications (a) within ICE, and (b) between ICE and [the persons/entities enumerated in item 1(a) through 1(g), above] regarding the Secure Communities Program in California from February 18, 2011 to the present.

You have requested expedited processing, news media status, and a waiver of all applicable fees.

The Asian Law Caucus' Request for Expedited Processing

As to your request for expedited review, 5 U.S.C. § 552(a)(6)(E)(i) states that "each agency shall promulgate regulations ... providing for expedited processing of requests for records." There are two categories of requests that merit expedited review under DHS FOIA regulations: (1) requests

for which a “lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;” or (2) where there is “an urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information.”¹

It appears that you have requested expedited treatment on the basis of “an urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information.”² Under DHS FOIA regulations, a requester seeking expedited treatment on this basis, “if not a full-time member of the news media, must establish that he or she is a person whose main professional activity or occupation is information dissemination, though it need not be his or her sole occupation.”³ Such requests must also “establish a particular urgency to inform the public about the government activity involved in the request, beyond the public’s right to know about government activity generally.”⁴

Based upon my review of the information contained in your request, I have determined to deny your request for expedited processing. You have not provided any evidence that information dissemination is your main professional activity, nor have you adequately demonstrated a particular urgency to inform the public regarding the subject matter of your request, beyond the public’s general right to know about government activity.

The Asian Law Caucus’ Fee Status Request

Regarding your fee status request, I am denying your request for “representative of the news media” status. The Department of Homeland Security (“DHS”) FOIA regulations specifically define “representative of the news media” as “any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public.”⁵ Based on the information contained in your letter, I am denying your request for this fee status because you have not presented a convincing argument that The Asian Law Caucus (ALC) is an entity organized and operated to publish or broadcast news to the public. To the contrary, in your letter, you describe The Asian Law Caucus as “a legal and civil rights organization” whose mission is to “promote, advance, and represent the legal and civil rights of [Asian and Pacific Islander] communities”.

The ALC’s Request for a Full Fee Waiver

You have requested a full fee waiver on the grounds that “disclosure of the requested records is likely to contribute significantly to public understanding of the operations or activities of the government” and that the disclosure of the requested records “is not primarily in the commercial interest of the requester”.

ICE evaluates fee waiver requests under the fee waiver policy guidance issued on April 2, 1987, by the Department of Justice, as incorporated into the DHS FOIA regulations⁶. These regulations set forth six factors to examine in determining whether the applicable legal standard for fee waiver has been met. I have considered the following factors in my evaluation of your request for a fee waiver:

¹ 6 C.F.R. § 5.5(d)(1)(i), (ii).

² 6 C.F.R. § 5.5(d)(ii).

³ 6 C.F.R. § 5.5(d)(iii).

⁴ *Id.*

⁵ 6 C.F.R. § 5.11(b)(6).

⁶ 6 CFR § 5.11(k).

(1) whether the subject of the requested records concerns “the operations or activities of the government”; (2) whether the disclosure is “likely to contribute” to an understanding of government operations or activities; (3) whether disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requester of a narrow segment of interested persons; (4) whether the contribution to public understanding of government operations or activities will be “significant”; (5) whether the requester has a commercial interest that would be furthered by the requested disclosure; and (6) whether the magnitude of any identified commercial interest to the requester is sufficiently large in comparison with the public interest in disclosure that disclosure is primarily in the commercial interest of the requester.

After review of your FOIA request, and in consideration of the six factors described above, I have determined that ALC has failed to provide a convincing argument that the disclosure of all communications concerning these three topics (the TRUST Act, ICE holds/detainers in California, and the Secure Communities Program in California) would significantly contribute to the public’s understanding of the government’s operations or activities.

ALC’s Request is Overly Broad and is Not Perfected

Your request, as written, is overly broad and does not identify the specific records that you are seeking. Your request seeks a voluminous quantity of records and information created by hundreds, if not thousands, of ICE employees during a 22-month period.

The FOIA does not require agencies to search for the proverbial needle in a haystack, nor does it contemplate that requesters will ask for the entire haystack. “[I]t is the requester’s responsibility to frame requests with sufficient particularity to ensure that searches are not unreasonably burdensome, and to enable the searching agency to determine precisely what records are being requested”.⁷

Records must be described in reasonably sufficient detail to enable government employees who are familiar with the subject area to locate records without placing an unreasonable burden upon the agency. For this reason, § 5.3(b) of the DHS regulations, 6 C.F.R. Part 5, require that you describe the records you are seeking with as much information as possible to ensure that our search can locate them with a reasonable amount of effort. Whenever possible, a request should include specific information about each record sought, such as the date, title or name, author, recipients, and subject matter of the records, if known, or the DHS component or office you believe created and/or controls the record.

Records that are potentially responsive to your request would be maintained in many different forms and formats at ICE Offices located in California, Washington, D.C., and potentially other ICE Offices located throughout the United States and overseas. Searching for these records would require thousands, if not tens-of-thousands, of man-hours and would yield tens-of-thousands, if not millions, of pages of potentially responsive records. If ICE were to conduct a search for records that are potentially responsive to these items of your request, the search for responsive records would significantly impact agency operations.

Because your request is not described in reasonably sufficient detail to enable ICE employees who are familiar with the subject area to locate records without placing an unreasonable burden upon the agency, we do not consider your request to be perfected.

⁷ See *Assassination Archives and Research Center, Inc. v. Central Intel. Agency*, 720 F. Supp. 217, 219 (D.D.C. 1989).

Please resubmit your request and provide a reasonable description of the specific records you are seeking. This is not a denial of your request. Upon receipt of a perfected request, we will immediately inform you of the status of your request and of the actions ICE is taking to promptly comply with your perfected request.

Additionally, should you wish to request information about specific individuals, and before we can release any personal information about those individuals, ICE must first verify each individual's identity and receive notice that he or she consents to the release of their personal information to the ACLU. DHS regulations, 6 CFR § 5.21(d), require verification of each individual's identity, including his or her full name, current address, and date and place of birth. In addition, such consent must be made in writing, contain the individual's signature, and should either be notarized or contain a statement made under penalty of perjury, as permitted by 28 U.S.C. § 1746.⁸

If we do not receive an amended request from you within fifteen (15) business days from the date of this letter, we will assume that you are no longer interested in your request and will consider your request withdrawn.

Invitation to Discuss ALC's Request

I invite you to schedule an appointment to speak with Mr. Ryan Law and Mr. Mark Graff of my staff, who may be able to assist you in perfecting your request. Please contact Mr. Graff at (866) 633-1182 to schedule an appointment.

⁸ For your convenience, I have enclosed a copy of form G-639 that can be used to satisfy the requirements of 6 CFR § 5.21(d).

ICE has made a large quantity of information concerning ICE detainers and the Secure Communities Program available to the public on the Agency's website at www.ice.gov.

ICE has posted a fact sheet concerning ICE detainers at <http://www.ice.gov/news/library/factsheets/detainer-faqs.htm>

ICE has posted the National Detainer Guidance entitled "Civil Immigration Enforcement: Guidance on the Use of Detainers in the Federal, State, Local, and Tribal Criminal Justice Systems" at <http://www.ice.gov/doclib/detention-reform/pdf/detainer-policy.pdf>.

A copy of the ICE detainer form can be accessed at <http://www.ice.gov/doclib/secure-communities/pdf/immigration-detainer-form.pdf>.

A search of ICE's press releases at the link below using the word "detainer" locates 54 press releases issued between 2008 and the present. A search of ICE's press releases at the link below using the words "secure communities" locates more than 100 press releases issued between 2009 and the present. ICE's press releases can be searched at <http://www.ice.gov/news/>.

ICE has posted its Office of Congressional Relations (OCR) call and correspondence logs in the FOIA Library. These logs contain the dates and descriptions of verbal and written communications between ICE and Congress. These logs can be accessed at the links below:

OCR Call Log, <http://www.ice.gov/doclib/foia/reports/ocr-call-log-jan2011-april2012.pdf>
OCR Correspondence Log, <http://www.ice.gov/doclib/foia/reports/ocr-call-log-jan2011-april2012.pdf>

Information concerning ICE's Secure Communities Program is publicly available at http://www.ice.gov/secure_communities/. Available information includes briefings for state and local law enforcement officials, and statistics.

Additional information about ICE's Secure Communities Program is available in the FOIA Library at www.ice.gov/foia/library/ under the "Secure Communities" link.

Appeal Rights

You have the right to appeal ICE's determinations. Should you wish to do so, send your appeal and a copy of this letter to: U.S. Immigration Customs Enforcement, Office of the Principal Legal Advisor, U.S. Department of Homeland Security, Freedom of Information Office, 500 12th Street, S.W., Stop 5009 Washington, D.C. 20536-5009, and follow the procedures outlined in the DHS regulations set forth at 6 C.F.R. § 5.9. Your appeal must be received within 60 days of the date of this letter. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at www.dhs.gov/foia.

The Office of Government Information Services (OGIS) mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you wish to contact OGIS, you may email them at ogis@nara.gov or call (877) 684-6448.

If you need to contact our office about this matter, please refer to case number **2013FOIA08088**.
This office can be reached at (866) 633-1182.

Sincerely,

The image shows a handwritten signature in black ink. The signature is stylized, starting with a large 'M' and ending with a long horizontal stroke. To the right of the signature, the word 'FOR' is written in a similar handwritten style.

Catrina M. Pavlik-Keenan
FOIA Officer

Enclosure: Your December 21, 2012 FOIA Request
Form G-639, 2 pages

ASIAN
LAW CAUCUS



MEMBER OF
ASIAN AMERICAN CENTER
FOR ADVANCING JUSTICE

December 21, 2012

VIA OVERNIGHT MAIL AND EMAIL

FOIA Office
U.S. Immigration and Customs Enforcement
800 North Capitol St., NW
5th Floor, Suite 585
Washington, DC 20536
ICE-FOIA@ice.dhs.gov

RE: Freedom of Information Act Request

Dear ICE FOIA Unit:

This is a request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 on behalf of the Asian Law Caucus ("Requester"). We ask that you please direct this request to all appropriate offices and departments within the agency.

A. RECORDS REQUESTED

1. We request any and all Records related to communications within ICE, and between ICE and the following persons/entities and categories of persons/entities regarding California's Transparency and Responsibility Using State Tools ("TRUST") Act (passed in the California Senate and Assembly in August 2012 as Assembly Bill 1081 and reintroduced in the Assembly on December 3, 2012 as Assembly Bill 4) from February 18, 2011 to the present:

- a. The Office of California Governor Jerry Brown
- b. The Office of California Attorney General Kamala Harris
- c. The White House
- d. Non-governmental organizations
- e. California law enforcement officials (including the California Sheriff's Association, California Sheriffs, and California Police Chiefs)
- f. Members of the United States Congress
- g. Members of the Press

For each person/entity and category of person/entity, we seek Records of the communications themselves, as well as any other Records related to the communications.

ASIAN LAW CAUCUS
In Defense of Civil Rights
55 Columbus Ave., San Francisco, CA 94111
Direct: (415) 848-7719 / Fax: (415) 896-1702
Website: www.alc.advancingjustice.org / E-mail: angelac@asianlawcaucus.org

Page 2 of 5, RE: Freedom of Information Act Request

2. We request any and all Records related to communications within ICE, and between ICE and the following persons/entities and categories of persons/entities regarding ICE holds (also known as ICE detainees) and/or the Secure Communities Program in California from February 18, 2011 to the present:

- a. The Office of California Governor Jerry Brown
- b. The Office of California Attorney General Kamala Harris
- c. The White House
- d. Non-governmental organizations
- e. California law enforcement officials (including the California Sheriff's Association, California Sheriffs, or California Police Chiefs)
- f. Members of the United States Congress
- g. Members of the press

For each person/entity and category of person/entity, we seek Records of the communications themselves, as well as any other Records related to the communications.

As used herein, the term "Record" includes, but is not limited to, all records or communications preserved in electronic or written form, such as correspondences, text messages, cell phone records, telephone records, emails, documents, data, videotapes, audio tapes, faxes, files, guidance, guidelines, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, legal opinions, protocols, reports, rules, technical manuals, technical specifications, training manuals, studies, or any other Record of any kind.

B. THE REQUESTER

Founded in 1972, the Asian Law Caucus is the nation's first legal and civil rights organization serving the low-income Asian and Pacific Islander (API) communities. The ALC focuses on housing rights, immigration and immigrants' rights, labor and employment issues, voting rights, civil rights and national security, and criminal justice reform. The mission of the Asian Law Caucus is to promote, advance, and represent the legal and civil rights of API communities. Recognizing that social, economic, political and racial inequalities continue to exist in the United States, the Asian Law Caucus is committed to the pursuit of equality and justice for all sectors of our society, with a specific focus directed toward addressing the needs of low-income, immigrant and underserved APIs. The ALC is one of several non-governmental organizational sponsors of the TRUST Act.

C. EXPEDITED PROCESSING

Expedited processing of this request is necessary both because there is a "compelling need" for the information, 5 U.S.C. § 552(a)(6)(E)(i)(I), and because there is "[a]n urgency to inform the public about an actual or alleged federal government activity" and the request is "made by a person primarily engaged in disseminating information." 6 C.F.R. § 5.5.

This request concerns the California TRUST Act. The TRUST Act was approved by the California Assembly and Senate in August 2012, vetoed by the Governor on September 30, 2012, and reintroduced in the California Assembly on December 3, 2012. It is currently the subject of intense media and public attention at both the state and national level.¹ The TRUST Act seeks to restore trust between police and immigrant communities in the wake of the controversial Secure Communities deportation program. Although ICE originally described Secure Communities as a program to target serious criminals, the majority of the over 82,000 Californians deported through the program have either never been convicted of any offense, or have only minor misdemeanor convictions.² As a result of Secure Communities, an arrest for driving without a license can end with the separation of a family, and immigrant communities are reluctant to report crime or cooperate with the police for fear of deportation. The TRUST Act seeks to address these problems by limiting compliance with ICE detainer requests to cases involving serious or violent crimes. Governor Brown has expressed his interest in working with advocates and the Legislature to amend the TRUST Act so that it can be passed into law in 2013.³

The public has a compelling need to know what ICE communicated to California officials and the public regarding the TRUST Act and Secure Communities, the deportation program that provided the impetus for the TRUST Act. ICE has previously provided misleading information to Californians regarding Secure Communities.⁴ ICE continues to put heavy pressure on jurisdictions that have passed policies similar to the TRUST Act.⁵ Given ICE's record, and the importance of this

¹ See, e.g., Araceli Martinez Ortega, *Más presión por el Acta de Confianza*, La Opinion, Nov. 28 2012, available at www.laopinion.com/Mas-presion-por-el-Acta-de-Confianza; Leslie Berestein Rojas, *California's 'anti-Arizona' TRUST Act is back for another round*, KPCC, Dec. 3, 2012, at <http://www.scpr.org/blogs/multiamerican/2012/12/03/11368/californias-anti-arizona-trust-act-back-another-ro/>; Amy Taxin, *Immigrant advocates blast Brown vetoes in Calif.*, Associated Press, Oct. 1, 2012, available at http://hosted2.ap.org/txdam/54828a5e8d9d48b7ba8b94ba38a9ef22/Article_2012-10-01-US-California-Immigrant-Rights/id-cbb8f6ed91394e589005b394e614dda6; Mary Slosson, *California governor vetoes bill curbing deportation checks*, Reuters, Oct. 1, 2012, available at <http://www.reuters.com/article/2012/10/01/us-usa-california-immigration-idUSBRE89004K20121001>; Patrick McGreevy and Anthony York, *Brown acts on driver's license, deportation bills*, Los Angeles Times, Oct. 1, 2012, available at <http://www.latimes.com/news/local/la-me-brown-bills-20121001,0,4581699.story>; *Calif gov. OKs bill on illegal immigrant licenses*, USA Today, Oct. 1, 2012, available at <http://www.usatoday.com/story/news/nation/2012/10/01/calif-gov-oks-bill-on-illegal-immigrant-licenses/1605291/>; Oped, *Cardinal Mahony: Yes to the TRUST Act*, Los Angeles Times, Sept. 28, 2012; Lawrence Downes, *Gov. Brown Should Sign the Trust Act*, New York Times, Sept. 26, 2012, available at <http://takingnote.blogs.nytimes.com/2012/09/26/gov-brown-should-sign-the-trust-act/>.

² See Secure Communities Nationwide Interoperability Statistics, available at http://www.ice.gov/doclib/foia/sc-stats/nationwide_interop_stats-fy2012-to-date.pdf

³ See AB 1081 Veto Message, available at http://gov.ca.gov/docs/AB_1081_Veto_Message.pdf; see also Amy Taxin, *Immigrant advocates blast Brown vetoes in Calif.*, supra note 1.

⁴ See *NDLON v. ICE*, 811 F. Supp. 2d 713, 742 (S.D.N.Y. 2011) (finding "ample evidence that ICE and DHS have gone out of their way to mislead the public about Secure Communities"); compare Memorandum of Agreement between DHS, ICE, and California Dep't of Justice, available at http://www.ice.gov/doclib/foia/secure_communities-moa/california-sc-moa.pdf (describing Secure Communities as "a comprehensive ICE initiative . . . to identify, detain, and remove from the United States aliens who have been convicted of serious offenses") with Secure Communities Nationwide Interoperability Statistics, available at http://www.ice.gov/doclib/foia/sc-stats/nationwide_interop_stats-fy2012-to-date.pdf (showing that over half of all Californians deported through Secure Communities had either no criminal history or only misdemeanor convictions).

⁵ See Elise Foley, *TRUST Act Vetoed: California Gov. Jerry Brown Calls Limits on Immigration Enforcement 'Flawed'*, Huffington Post, Oct. 1, 2012, available at http://www.huffingtonpost.com/2012/10/01/trust-act-veto-jerry-brown_n_1928444.html

Page 4 of 5, RE: Freedom of Information Act Request

issue to Californians, there is a compelling need for public oversight of communications between ICE and California officials regarding the TRUST Act. This need is exactly what the FOIA was designed to vindicate.⁶

It is urgent that Requester obtains the requested information in a timely fashion. Assemblymember Ammiano reintroduced the TRUST Act on December 3, 2012, and Governor Brown has indicated that "He is willing to work with stakeholders to address major concerns and improve [the bill]."⁷ Requester needs prompt access to the requested documents in order to ensure the public's ability participate in the on-going work on this bill in an informed manner.

Requester will disseminate all information obtained through this request to the public. Indeed, Requester maintains a website that receives many visits, analyzes public records regarding ICE holds and Secure Communities, and widely publishes and disseminates that information to the press and to the public.⁸

D. FEE WAIVER

Requester is entitled to a waiver of all costs because disclosure of the Records sought "is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). Requester is also entitled to a waiver of all costs because it is a representative of the news media. 6 C.F.R. § 5.11(d)(1).

As described above, the TRUST Act is currently the subject of intense media and public attention, both in California and throughout the country. The records sought here will significantly contribute to public knowledge about the TRUST Act. Requester is well situated to disseminate the information gained from this request to the general public. Requester, a not-for-profit organization, has no commercial interest in these records. As also described above, in accordance with their general practice, Requester plans to disseminate records disclosed as a result of this FOIA request to the public.

E. CERTIFICATION

The Requester certifies that the above information is true and correct to the best of its knowledge. See 6 C.F.R. § 5.5(d)(3).

⁶ See, e.g., *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1979) (affirming the public's right to be part of "an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed").

⁷ Amy Taxin, *Immigrant advocates blast Brown vetoes in Calif.*, supra note 1.

⁸ For example, the Asian Law Caucus maintains, in partnership with other organizations, a heavily visited website that disseminates information, including information obtained through the FOIA, to the public about the Secure Communities deportation program. See www.asianlawcaucus.org. The Asian Law Caucus also regularly publishes factsheets, briefing guides, and other materials, which it disseminates widely to the public through print and online. See, e.g., www.asianlawcaucus.org/publications.

Page 5 of 5, RE: Freedom of Information Act Request

If this request is denied in whole or in part, we ask that you justify all redactions by reference to specific FOIA exemptions. Please specify the search that was undertaken to locate records responsive to this request. We expect you to release all segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information or to deny expedited processing or a waiver of fees.

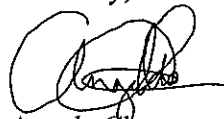
We look forward to your response to our request for expedited processing within ten (10) business days, as required under 5 U.S.C. § 552(a)(6)(E)(ii)(I). Should our request for expedited processing be denied, we expect to receive your response to this request within twenty (20) business days, as required under 5 U.S.C. § 552(a)(6)(A)(I).

If any records are available in electronic form, please furnish them in electronic form. Please furnish all responsive Records to:

Angela F. Chan
Asian Law Caucus
55 Columbus Avenue
San Francisco, CA 94111
Fax: 415.896.1702
Tel: 415.848.7719
E-mail: angelac@asianlawcaucus.org

If you have any questions regarding the processing of this request, please contact Angela Chan at 415.848.7719 or angelac@asianlawcaucus.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'Angela Chan', is written over a circular stamp or seal.

Angela Chan
Senior Staff Attorney

OMB No. 1615-0102; Expires 01/31/2015

Department of Homeland Security
U.S. Citizenship and Immigration Services

Form G-639, Freedom of Information/Privacy Act Request

NOTE: Use of this form is optional. Any written format for a Freedom of Information or Privacy Act request is acceptable.

START HERE - Type or print in black ink. Read instructions before completing this form.

1. Type of Request (Check appropriate box. **NOTE:** If you are filing this request for records on behalf of another individual, please respond to Number 1 as it would apply to that individual.)

- ☐ Freedom of Information Act (FOIA): I am not a U.S. citizen/Lawful Permanent Resident and I am requesting my own records.
- ☐ Freedom of Information Act (FOIA): I am a U.S. citizen/Lawful Permanent Resident and I am requesting documents other than my own records.
- ☐ Privacy Act (PA): I am a U.S. citizen/Lawful Permanent Resident and I am requesting my own records.
- ☐ Amendment of Record (PA only): I am a U.S. citizen/Lawful Permanent Resident and I am requesting amendment of my own records.
- ☐ Other: _____

2. Description of Record(s) Requested:

NOTE: While you are not required to respond to all items in Number 2, failure to provide complete and specific information as requested may result in a delay in processing or an inability to locate the record(s) or information requested.

- ☐ Complete Alien File (A-File)
- ☐ Other (please specify): _____

Purpose: (Optional: You are not required to state the purpose of your request. However, doing so may assist USCIS in locating the record(s) needed to respond to your request.)

Family Name (Last Name)		Given Name (First Name)		Middle Name
Other Names Used (if any)		Name at time of entry into the U.S.		I-94 Admission #
Alien Registration Number (A#)	Petition or Claim Receipt #	Country of Birth	Date of Birth (mm/dd/yyyy)	

Names of other family members that may appear on requested record(s) (i.e., spouse, daughter, son):

Family Member's Name: Given Name (First Name)		Middle Name	Family Name (Last Name)	Relationship
Father's Name: Given Name (First Name)		Middle Name	Family Name (Last Name)	
Mother's Name: Given Name (First Name)		Middle Name	Family Name (Last Name, including Maiden Name)	
Country of Origin (Place of Departure)		Port of Entry Into the U.S.		Date of Entry (mm/dd/yyyy)
Manner of Entry (Air, Sea, Land)		Mode of Travel (Name of Carrier)		

3. Subject of Record Consent to Release Information *(Must be signed by the subject of record(s) requested.)*

By my signature, I consent to allow USCIS to release to the requester named in Number 5 (Check applicable box):

- ☐ All of my records ☐ A portion of my records *(If a portion, specify below what part, i.e., copy of application.)*

Print Name of Subject of Record _____

Signature of Subject of Record _____

Date (mm/dd/yyyy) _____

- ☐ Deceased Subject - **Proof of death must be attached** *(Obituary, Death Certificate, or other proof of death required)*

4. Verification of Identity *(Required; Fill out all that apply.)*

Name of Subject of Record <i>(First, Middle, Last)</i>		Daytime Telephone	E-mail Address
Address <i>(Street Number and Name)</i>		Apt. Number	
City	State	Zip Code	
Date of Birth <i>(mm/dd/yyyy)</i>	Place of Birth		

The Subject of Record must provide a signature under either a Notarized Affidavit of Identity or a Sworn Declaration Under Penalty of Perjury:

- ☐ Notarized Affidavit of Identity

Signature of Subject of Record _____

Date (mm/dd/yyyy) _____

Subscribed and sworn to before me this _____ day of _____

Telephone No. _____

Signature of Notary _____

My Commission Expires on _____

OR

- ☐ Sworn Declaration Under Penalty of Perjury

Executed outside the United States

If executed outside the United States: "I declare (certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct."

Executed in the United States

If executed within the United States, its territories, possessions, or commonwealths: "I declare (certify, verify, or state) under penalty of perjury that the foregoing is true and correct."

Signature of Subject of Record _____

Signature of Subject of Record _____

5. Requester InformationBy my signature, I consent to pay all costs incurred for search, duplication and review of materials up to \$25 *(See instructions)*

Signature of Requester: _____

Name of Requester <i>(Fill out if different from the Subject of Record.)</i>		Daytime Telephone	E-mail Address
Address <i>(Street Number and Name)</i>		Apt. Number	
City	State	Zip Code	

EXHIBIT C

UNIVERSITY OF CALIFORNIA, IRVINE

BERKELEY • DAVIS • IRVINE • LOS ANGELES • MERCED • RIVERSIDE • SAN DIEGO • SAN FRANCISCO



SANTA BARBARA • SANTACRUZ

UCI Law Clinic
School of Law

PO Box 5479
Irvine, CA 92616-5479
(949) 824-9660

January 25, 2013

VIA EMAIL AND FED EX

FOIA Office

U.S. Immigration and Customs Enforcement
800 North Capitol St., NW
5th Floor, Suite 585
Washington, DC 20536
ICE-FOIA@ice.dhs.gov

**RE: AMENDED Freedom of Information Act Request
ICE FOIA Case Number 2013FOIA08088**

Dear Ms. Pavlik-Keenan:

This is an amendment to the above-referenced December 21, 2012, Freedom of Information Act (FOIA) request ("Request") to U.S. Immigration and Customs Enforcement (ICE) on behalf of the Asian Law Caucus ("Requester"). The Request sought disclosure of records in the possession of ICE relating to California's Transparency and Responsibility Using State Tools (TRUST) Act,¹ ICE detainees in California, and the Secure Communities Program in California. It also requested expedited processing and a fee waiver. A copy of the Request is attached as Exhibit A.

On January 3, 2013, ICE mailed a letter to the Asian Law Caucus (1) denying their requests for a fee waiver and expedited processing and (2) requesting that they submit an amended request with a "reasonable description of the specific records you are seeking." Additionally, the letter invited the Asian Law Caucus to discuss their Request with ICE FOIA staff. A copy of the letter is attached as Exhibit B.

The Asian Law Caucus has retained the Immigrant Rights Clinic of the University of California, Irvine School of Law to represent them with respect to this Request. In that capacity, Certified Law Student Jennifer Chin spoke to Mark Graff, a FOIA staff member, on Wednesday, January 25, 2013, at 5:00 p.m. (EST) regarding the Request. Mr. Graff recommended that ALC narrow the Request to exclude ICE "components," meaning departments within ICE, that it is not

¹ A.B. 1081, 2011–12 Leg., Reg. Sess. (Cal. 2012) (reintroduced as A.B. 4, 2013–14 Leg., Reg. Sess. (Cal. 2012)).

interested in searching at this time. Point one of our amended request, below, is responsive to this suggestion.²

A. AMENDED REQUEST

In response to ICE's letter, dated January 3, 2013, Requester submits this amended request. We note however, that DHS regulations require that, when a DHS component such as ICE determines a FOIA request "does not reasonably describe records," it shall tell the requester "either what additional information is needed or why the request is otherwise insufficient."³ In its response letter, ICE did not inform the Requester of any specific additional information that is needed and did not take issue with any specific records request. Rather, ICE claims only generally that the FOIA request is "overly broad and is not perfected" by virtue of seeking a large quantity of records potentially maintained in "many different forms and formats at ICE Offices located in California, Washington, D.C., and potentially other ICE Offices located throughout the United States and overseas." ICE's letter did not state why it deems the request insufficient with regard to either the three substantive topics—the TRUST Act, ICE detainees in California, and the Secure Communities Program in California—or the persons/entities and categories of persons/entities referenced in our original request.

Though we maintain that the original Request was sufficiently narrow to meet the 6 C.F.R. §5.3(b) requirement of reasonably describing the records we seek, and reserve all of our statutory rights with respect to our original request, Requester hereby narrows the scope of the Request as follows:

1. The scope of the Request is limited to records contained in ICE's national headquarters and all ICE offices in California. With respect to ICE national headquarters, this request is limited to the following divisions:
 - Director/Deputy Director of ICE (including Assistant Deputy Directors, Chief of Staff, and Executive Secretariat)
 - Professional Responsibility
 - Detention Policy and Planning
 - Principal Legal Advisor
 - State and Local Coordination
 - Congressional Relations
 - Enforcement, Removal Operations (including all units under this office)

² We scheduled a second call with Mr. Graff so that he could repeat his recommendations directly to our client, ALC. That call was scheduled for 3:00-4:00 p.m. (EST) on Friday, January 25, 2013. We called several times between 3:00 and 3:25 p.m., but Mr. Graff was not available at the provided number at that time.

³ 6 C.F.R. § 5.3(b).

While this relieves ICE of proactively searching other offices, we note that ICE may not “ignore what it cannot help but know,”⁴ and request that ICE provide documents from other offices if, in the course of searching for records in its California and National offices, ICE discovers “a lead so apparent that [ICE] cannot in good faith fail to pursue it.”

2. With regard to ICE detainees,
 - a. this request specifically excludes personal information or records regarding specific individuals currently or previously held on an ICE detainer by the State of California or any of its political subdivisions. We are not seeking personal information about specific individuals.
 - b. this request contemplates that any personal, identifying information about private individuals that is contained in documents that are otherwise responsive to our request will be redacted by ICE. We do not object to ICE’s redaction of such personal, identifying information of private individuals. However, we maintain our right to identifying information about individual public officials or employees.

B. EXPEDITED PROCESSING

Pursuant to the procedures in 6 C.F.R. § 5.9, we intend to appeal ICE’s January 3 denial of expedited processing. We maintain that ALC is entitled to expedited processing for the reasons stated in our initial request, and incorporate those reasons herein.

C. FEE WAIVER

Pursuant to the procedures in 6 C.F.R. § 5.9, we intend to appeal ICE’s January 3 denial of ALC’s request for a fee waiver. We maintain that ALC is entitled to “representative of the news media” status as well as a full fee waiver based on the public interest nature of the information sought, for the reasons stated in our initial request. We incorporate those reasons herein.

D. CERTIFICATION

The Requester certifies that the above information is true and correct to the best of its knowledge. See 6 C.F.R. § 5.5(d)(3).

⁴ *Kowalczyk v. Department of Justice*, 73 F.3d 386, 389 (D.C. Cir. 1996), *see also National Resources Defense Council v. U.S. Dept. of Defense*, 388 F.Supp.2d 1086, 1102 (C.D. Cal. 2005) (ordering the Department of Defense to search the Air Force for records responsive to a FOIA request, even though the requester did not request records from the Air Force, where the Department of Defense knew that the Air Force had substantial numbers of responsive documents and the requester did not know that Air Force had responsive documents).

If this amended request is denied in whole or in part, we ask that you justify all redactions by reference to specific FOIA exemptions. Please specify the search that was undertaken to locate records responsive to this request. We expect you to release all segregable portions of otherwise exempt material. In addition, we reserve the right to appeal any further decisions to withhold any information.

We look forward to your response to our amended request within fourteen (14) business days, as required under 5 U.S.C. § 552(a)(6)(A)(ii) (providing that an agency's receipt of a requestor's response to the agency's request for information or clarification ends the tolling period for the agency's deadline to respond to a FOIA request).

If any records are available in electronic form, please furnish them in electronic form. Please furnish all responsive Records to:

Jessica Karp
UC Irvine School of Law
P.O. Box 5479
Irvine, CA 92616-5479
Fax: 949-2747
Tel: 949.824.9660
E-mail: jkarp@ndlon.org

If you have any questions regarding the processing of this request, please contact Jessica Karp at 949.824.9660 or jkarp@ndlon.org.

Sincerely,

/s/

Jessica Karp
Adjunct Professor of Law
UC Irvine School of Law
Immigrant Rights Clinic

Jennifer Chin
Ryan Graham
Cristina Salvato
Certified Law Students
UC Irvine School of Law
Immigrant Rights Clinic

Sameer Ashar
Director
UC Irvine School of Law
Immigrant Rights Clinic

Attorneys for Asian Law Caucus



December 21, 2012

VIA OVERNIGHT MAIL AND EMAIL

FOIA Office

U.S. Immigration and Customs Enforcement

800 North Capitol St., NW

5th Floor, Suite 585

Washington, DC 20536

ICE-FOIA@ice.dhs.gov

RE: Freedom of Information Act Request

Dear ICE FOIA Unit:

This is a request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 on behalf of the Asian Law Caucus ("Requester"). We ask that you please direct this request to all appropriate offices and departments within the agency.

A. RECORDS REQUESTED

1. We request any and all Records related to communications within ICE, and between ICE and the following persons/entities and categories of persons/entities regarding California's Transparency and Responsibility Using State Tools ("TRUST") Act (passed in the California Senate and Assembly in August 2012 as Assembly Bill 1081 and reintroduced in the Assembly on December 3, 2012 as Assembly Bill 4) from February 18, 2011 to the present:

- a. The Office of California Governor Jerry Brown
- b. The Office of California Attorney General Kamala Harris
- c. The White House
- d. Non-governmental organizations
- e. California law enforcement officials (including the California Sheriff's Association, California Sheriffs, and California Police Chiefs)
- f. Members of the United States Congress
- g. Members of the Press

For each person/entity and category of person/entity, we seek Records of the communications themselves, as well as any other Records related to the communications.

ASIAN LAW CAUCUS
In Defense of Civil Rights
55 Columbus Ave., San Francisco, CA 94111
Direct: (415) 848-7719 / Fax: (415) 896-1702
Website: www.alc.advancingjustice.org / E-mail: angelac@asianlawcaucus.org

2. We request any and all Records related to communications within ICE, and between ICE and the following persons/entities and categories of persons/entities regarding ICE holds (also known as ICE detainers) and/or the Secure Communities Program in California from February 18, 2011 to the present:

- a. The Office of California Governor Jerry Brown
- b. The Office of California Attorney General Kamala Harris
- c. The White House
- d. Non-governmental organizations
- e. California law enforcement officials (including the California Sheriff's Association, California Sheriffs, or California Police Chiefs)
- f. Members of the United States Congress
- g. Members of the press

For each person/entity and category of person/entity, we seek Records of the communications themselves, as well as any other Records related to the communications.

As used herein, the term "Record" includes, but is not limited to, all records or communications preserved in electronic or written form, such as correspondences, text messages, cell phone records, telephone records, emails, documents, data, videotapes, audio tapes, faxes, files, guidance, guidelines, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, legal opinions, protocols, reports, rules, technical manuals, technical specifications, training manuals, studies, or any other Record of any kind.

B. THE REQUESTER

Founded in 1972, the Asian Law Caucus is the nation's first legal and civil rights organization serving the low-income Asian and Pacific Islander (API) communities. The ALC focuses on housing rights, immigration and immigrants' rights, labor and employment issues, voting rights, civil rights and national security, and criminal justice reform. The mission of the Asian Law Caucus is to promote, advance, and represent the legal and civil rights of API communities. Recognizing that social, economic, political and racial inequalities continue to exist in the United States, the Asian Law Caucus is committed to the pursuit of equality and justice for all sectors of our society, with a specific focus directed toward addressing the needs of low-income, immigrant and underserved APIs. The ALC is one of several non-governmental organizational sponsors of the TRUST Act.

C. EXPEDITED PROCESSING

Expedited processing of this request is necessary both because there is a "compelling need" for the information, 5 U.S.C. § 552(a)(6)(E)(i)(I), and because there is "[a]n urgency to inform the public about an actual or alleged federal government activity" and the request is "made by a person primarily engaged in disseminating information." 6 C.F.R. § 5.5.

This request concerns the California TRUST Act. The TRUST Act was approved by the California Assembly and Senate in August 2012, vetoed by the Governor on September 30, 2012, and reintroduced in the California Assembly on December 3, 2012. It is currently the subject of intense media and public attention at both the state and national level.¹ The TRUST Act seeks to restore trust between police and immigrant communities in the wake of the controversial Secure Communities deportation program. Although ICE originally described Secure Communities as a program to target serious criminals, the majority of the over 82,000 Californians deported through the program have either never been convicted of any offense, or have only minor misdemeanor convictions.² As a result of Secure Communities, an arrest for driving without a license can end with the separation of a family, and immigrant communities are reluctant to report crime or cooperate with the police for fear of deportation. The TRUST Act seeks to address these problems by limiting compliance with ICE detainer requests to cases involving serious or violent crimes. Governor Brown has expressed his interest in working with advocates and the Legislature to amend the TRUST Act so that it can be passed into law in 2013.³

The public has a compelling need to know what ICE communicated to California officials and the public regarding the TRUST Act and Secure Communities, the deportation program that provided the impetus for the TRUST Act. ICE has previously provided misleading information to Californians regarding Secure Communities.⁴ ICE continues to put heavy pressure on jurisdictions that have passed policies similar to the TRUST Act.⁵ Given ICE's record, and the importance of this

¹ See, e.g., Araceli Martinez Ortega, *Más presión por el Acta de Confianza*, La Opinion, Nov. 28 2012, available at www.laopinion.com/Mas-presion-por-el-Acta-de-Confianza; Leslie Berestein Rojas, *California's 'anti-Arizona' TRUST Act is back for another round*, KPCC, Dec. 3, 2012, at <http://www.scpr.org/blogs/multiamerican/2012/12/03/11368/californias-anti-arizona-trust-act-back-another-ro/>; Amy Taxin, *Immigrant advocates blast Brown vetoes in Calif.*, Associated Press, Oct. 1, 2012, available at http://hosted2.ap.org/txdam/54828a5e8d9d48b7ba8b94ba38a9ef22/Article_2012-10-01-US-California-Immigrant-Rights/id-cbb8f6ed91394e589005b394e614dda6; Mary Slosson, *California governor vetoes bill curbing deportation checks*, Reuters, Oct. 1, 2012, available at <http://www.reuters.com/article/2012/10/01/us-usa-california-immigration-idUSBRE89004K20121001>; Patrick McGreevy and Anthony York, *Brown acts on driver's license, deportation bills*, Los Angeles Times, Oct. 1, 2012, available at <http://www.latimes.com/news/local/la-me-brown-bills-20121001,0,4581699.story>; *Calif gov. OKs bill on illegal immigrant licenses*, USA Today, Oct. 1, 2012, available at <http://www.usatoday.com/story/news/nation/2012/10/01/calif-gov-oks-bill-on-illegal-immigrant-licenses/1605291/>; Op-ed, *Cardinal Mahony: Yes to the TRUST Act*, Los Angeles Times, Sept. 28, 2012; Lawrence Downes, *Gov. Brown Should Sign the Trust Act*, New York Times, Sept. 26, 2012, available at <http://takingnote.blogs.nytimes.com/2012/09/26/gov-brown-should-sign-the-trust-act/>.

² See Secure Communities Nationwide Interoperability Statistics, available at http://www.ice.gov/doclib/foia/sc-stats/nationwide_interop_stats-fy2012-to-date.pdf

³ See AB 1081 Veto Message, available at http://gov.ca.gov/docs/AB_1081_Veto_Message.pdf; see also Amy Taxin, *Immigrant advocates blast Brown vetoes in Calif.*, supra note 1.

⁴ See *NDLON v. ICE*, 811 F. Supp. 2d 713, 742 (S.D.N.Y. 2011) (finding “ample evidence that ICE and DHS have gone out of their way to mislead the public about Secure Communities”); compare Memorandum of Agreement between DHS, ICE, and California Dep't of Justice, available at http://www.ice.gov/doclib/foia/secure_communities-moa/california-sc-moa.pdf (describing Secure Communities as “a comprehensive ICE initiative . . . to identify, detain, and remove from the United States aliens who have been convicted of serious offenses”) with Secure Communities Nationwide Interoperability Statistics, available at http://www.ice.gov/doclib/foia/sc-stats/nationwide_interop_stats-fy2012-to-date.pdf (showing that over half of all Californians deported through Secure Communities had either no criminal history or only misdemeanor convictions).

⁵ See Elise Foley, *TRUST Act Vetoed: California Gov. Jerry Brown Calls Limits on Immigration Enforcement 'Flawed'*, Huffington Post, Oct. 1, 2012, available at http://www.huffingtonpost.com/2012/10/01/trust-act-veto-jerry-brown_n_1928444.html

issue to Californians, there is a compelling need for public oversight of communications between ICE and California officials regarding the TRUST Act. This need is exactly what the FOIA was designed to vindicate.⁶

It is urgent that Requester obtains the requested information in a timely fashion. Assemblymember Ammiano reintroduced the TRUST Act on December 3, 2012, and Governor Brown has indicated that “He is willing to work with stakeholders to address major concerns and improve [the bill].”⁷ Requester needs prompt access to the requested documents in order to ensure the public’s ability participate in the on-going work on this bill in an informed manner.

Requester will disseminate all information obtained through this request to the public. Indeed, Requester maintains a website that receives many visits, analyzes public records regarding ICE holds and Secure Communities, and widely publishes and disseminates that information to the press and to the public.⁸

D. FEE WAIVER

Requester is entitled to a waiver of all costs because disclosure of the Records sought “is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). Requester is also entitled to a waiver of all costs because it is a representative of the news media. 6 C.F.R. § 5.11(d)(1).

As described above, the TRUST Act is currently the subject of intense media and public attention, both in California and throughout the country. The records sought here will significantly contribute to public knowledge about the TRUST Act. Requester is well situated to disseminate the information gained from this request to the general public. Requester, a not-for-profit organization, has no commercial interest in these records. As also described above, in accordance with their general practice, Requester plans to disseminate records disclosed as a result of this FOIA request to the public.

E. CERTIFICATION

The Requester certifies that the above information is true and correct to the best of its knowledge. *See* 6 C.F.R. § 5.5(d)(3).

⁶ *See, e.g., NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1979) (affirming the public’s right to be part of “an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed”).

⁷ Amy Taxin, *Immigrant advocates blast Brown vetoes in Calif.*, *supra* note 1.

⁸ For example, the Asian Law Caucus maintains, in partnership with other organizations, a heavily visited website that disseminates information, including information obtained through the FOIA, to the public about the Secure Communities deportation program. *See* www.asianlawcaucus.org. The Asian Law Caucus also regularly publishes factsheets, briefing guides, and other materials, which it disseminates widely to the public through print and online. *See, e.g.,* www.asianlawcaucus.org/publications.

Page 5 of 5, RE: Freedom of Information Act Request

If this request is denied in whole or in part, we ask that you justify all redactions by reference to specific FOIA exemptions. Please specify the search that was undertaken to locate records responsive to this request. We expect you to release all segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information or to deny expedited processing or a waiver of fees.

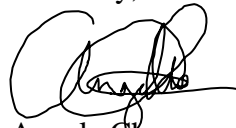
We look forward to your response to our request for expedited processing within ten (10) business days, as required under 5 U.S.C. § 552(a)(6)(E)(ii)(I). Should our request for expedited processing be denied, we expect to receive your response to this request within twenty (20) business days, as required under 5 U.S.C. § 552(a)(6)(A)(I).

If any records are available in electronic form, please furnish them in electronic form. Please furnish all responsive Records to:

Angela F. Chan
Asian Law Caucus
55 Columbus Avenue
San Francisco, CA 94111
Fax: 415.896.1702
Tel: 415.848.7719
E-mail: angelac@asianlawcaucus.org

If you have any questions regarding the processing of this request, please contact Angela Chan at 415.848.7719 or angelac@asianlawcaucus.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'Angela Chan', with a stylized flourish extending from the end.

Angela Chan
Senior Staff Attorney

Exhibit B

U.S. Department of Homeland Security
500 12th Street SW, MS 5009
Washington, DC 20536-5009



U.S. Immigration
and Customs
Enforcement

January 3, 2013

Ms. Angela Chan
The Asian Law Caucus
55 Columbus Avenue
San Francisco, CA 94111

RE: ICE FOIA Case Number 2013FOIA08088

Dear Ms. Chan:

This letter is in acknowledgement of, and is an initial response to, your Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), dated December 21, 2012. You have requested copies of the following records:

1. Any and all records related to communications (a) within ICE, and (b) between ICE and the following persons/entities and categories of persons/entities regarding California's Transparency and Responsibility Using State Tools ("TRUST") Act...from February 18, 2011 to the present:
 - a. The Office of California Governor Jerry Brown
 - b. The Office of California Attorney General Kamala Harris
 - c. The White House
 - d. Non-governmental organizations
 - e. California law enforcement officials, including
 - i. the California Sheriff's Association
 - ii. California Sheriffs, and
 - iii. California Police Chiefs
 - f. Members of the United States Congress
 - g. Members of the Press
2. Any and all records related to communications (a) within ICE, and (b) between ICE and [the persons/entities enumerated in item 1(a) through 1(g), above] regarding ICE holds (also known as ICE detainees) in California from February 18, 2011 to the present.
3. Any and all records related to communications (a) within ICE, and (b) between ICE and [the persons/entities enumerated in item 1(a) through 1(g), above] regarding the Secure Communities Program in California from February 18, 2011 to the present.

You have requested expedited processing, news media status, and a waiver of all applicable fees.

The Asian Law Caucus' Request for Expedited Processing

As to your request for expedited review, 5 U.S.C. § 552(a)(6)(E)(i) states that "each agency shall promulgate regulations ... providing for expedited processing of requests for records." There are two categories of requests that merit expedited review under DHS FOIA regulations: (1) requests

for which a “lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;” or (2) where there is “an urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information.”¹

It appears that you have requested expedited treatment on the basis of “an urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information.”² Under DHS FOIA regulations, a requester seeking expedited treatment on this basis, “if not a full-time member of the news media, must establish that he or she is a person whose main professional activity or occupation is information dissemination, though it need not be his or her sole occupation.”³ Such requests must also “establish a particular urgency to inform the public about the government activity involved in the request, beyond the public’s right to know about government activity generally.”⁴

Based upon my review of the information contained in your request, I have determined to deny your request for expedited processing. You have not provided any evidence that information dissemination is your main professional activity, nor have you adequately demonstrated a particular urgency to inform the public regarding the subject matter of your request, beyond the public’s general right to know about government activity.

The Asian Law Caucus’ Fee Status Request

Regarding your fee status request, I am denying your request for “representative of the news media” status. The Department of Homeland Security (“DHS”) FOIA regulations specifically define “representative of the news media” as “any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public.”⁵ Based on the information contained in your letter, I am denying your request for this fee status because you have not presented a convincing argument that The Asian Law Caucus (ALC) is an entity organized and operated to publish or broadcast news to the public. To the contrary, in your letter, you describe The Asian Law Caucus as “a legal and civil rights organization” whose mission is to “promote, advance, and represent the legal and civil rights of [Asian and Pacific Islander] communities”.

The ALC’s Request for a Full Fee Waiver

You have requested a full fee waiver on the grounds that “disclosure of the requested records is likely to contribute significantly to public understanding of the operations or activities of the government” and that the disclosure of the requested records “is not primarily in the commercial interest of the requester”.

ICE evaluates fee waiver requests under the fee waiver policy guidance issued on April 2, 1987, by the Department of Justice, as incorporated into the DHS FOIA regulations⁶. These regulations set forth six factors to examine in determining whether the applicable legal standard for fee waiver has been met. I have considered the following factors in my evaluation of your request for a fee waiver:

¹ 6 C.F.R. § 5.5(d)(1)(i), (ii).

² 6 C.F.R. § 5.5(d)(ii).

³ 6 C.F.R. § 5.5(d)(iii).

⁴ *Id.*

⁵ 6 C.F.R. § 5.11(b)(6).

⁶ 6 CFR § 5.11(k).

(1) whether the subject of the requested records concerns “the operations or activities of the government”; (2) whether the disclosure is “likely to contribute” to an understanding of government operations or activities; (3) whether disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requester of a narrow segment of interested persons; (4) whether the contribution to public understanding of government operations or activities will be “significant”; (5) whether the requester has a commercial interest that would be furthered by the requested disclosure; and (6) whether the magnitude of any identified commercial interest to the requester is sufficiently large in comparison with the public interest in disclosure that disclosure is primarily in the commercial interest of the requester.

After review of your FOIA request, and in consideration of the six factors described above, I have determined that ALC has failed to provide a convincing argument that the disclosure of all communications concerning these three topics (the TRUST Act, ICE holds/detainers in California, and the Secure Communities Program in California) would significantly contribute to the public’s understanding of the government’s operations or activities.

ALC’s Request is Overly Broad and is Not Perfected

Your request, as written, is overly broad and does not identify the specific records that you are seeking. Your request seeks a voluminous quantity of records and information created by hundreds, if not thousands, of ICE employees during a 22-month period.

The FOIA does not require agencies to search for the proverbial needle in a haystack, nor does it contemplate that requesters will ask for the entire haystack. “[I]t is the requester’s responsibility to frame requests with sufficient particularity to ensure that searches are not unreasonably burdensome, and to enable the searching agency to determine precisely what records are being requested”.⁷

Records must be described in reasonably sufficient detail to enable government employees who are familiar with the subject area to locate records without placing an unreasonable burden upon the agency. For this reason, § 5.3(b) of the DHS regulations, 6 C.F.R. Part 5, require that you describe the records you are seeking with as much information as possible to ensure that our search can locate them with a reasonable amount of effort. Whenever possible, a request should include specific information about each record sought, such as the date, title or name, author, recipients, and subject matter of the records, if known, or the DHS component or office you believe created and/or controls the record.

Records that are potentially responsive to your request would be maintained in many different forms and formats at ICE Offices located in California, Washington, D.C., and potentially other ICE Offices located throughout the United States and overseas. Searching for these records would require thousands, if not tens-of-thousands, of man-hours and would yield tens-of-thousands, if not millions, of pages of potentially responsive records. If ICE were to conduct a search for records that are potentially responsive to these items of your request, the search for responsive records would significantly impact agency operations.

Because your request is not described in reasonably sufficient detail to enable ICE employees who are familiar with the subject area to locate records without placing an unreasonable burden upon the agency, we do not consider your request to be perfected.

⁷ See *Assassination Archives and Research Center, Inc. v. Central Intel. Agency*, 720 F. Supp. 217, 219 (D.D.C. 1989).

Please resubmit your request and provide a reasonable description of the specific records you are seeking. This is not a denial of your request. Upon receipt of a perfected request, we will immediately inform you of the status of your request and of the actions ICE is taking to promptly comply with your perfected request.

Additionally, should you wish to request information about specific individuals, and before we can release any personal information about those individuals, ICE must first verify each individual's identity and receive notice that he or she consents to the release of their personal information to the ACLU. DHS regulations, 6 CFR § 5.21(d), require verification of each individual's identity, including his or her full name, current address, and date and place of birth. In addition, such consent must be made in writing, contain the individual's signature, and should either be notarized or contain a statement made under penalty of perjury, as permitted by 28 U.S.C. § 1746.⁸

If we do not receive an amended request from you within fifteen (15) business days from the date of this letter, we will assume that you are no longer interested in your request and will consider your request withdrawn.

Invitation to Discuss ALC's Request

I invite you to schedule an appointment to speak with Mr. Ryan Law and Mr. Mark Graff of my staff, who may be able to assist you in perfecting your request. Please contact Mr. Graff at (866) 633-1182 to schedule an appointment.

⁸ For your convenience, I have enclosed a copy of form G-639 that can be used to satisfy the requirements of 6 CFR § 5.21(d).

ICE has made a large quantity of information concerning ICE detainers and the Secure Communities Program available to the public on the Agency's website at www.ice.gov.

ICE has posted a fact sheet concerning ICE detainers at <http://www.ice.gov/news/library/factsheets/detainer-faqs.htm>

ICE has posted the National Detainer Guidance entitled "Civil Immigration Enforcement: Guidance on the Use of Detainers in the Federal, State, Local, and Tribal Criminal Justice Systems" at <http://www.ice.gov/doclib/detention-reform/pdf/detainer-policy.pdf>.

A copy of the ICE detainer form can be accessed at <http://www.ice.gov/doclib/secure-communities/pdf/immigration-detainer-form.pdf>.

A search of ICE's press releases at the link below using the word "detainer" locates 54 press releases issued between 2008 and the present. A search of ICE's press releases at the link below using the words "secure communities" locates more than 100 press releases issued between 2009 and the present. ICE's press releases can be searched at <http://www.ice.gov/news/>.

ICE has posted its Office of Congressional Relations (OCR) call and correspondence logs in the FOIA Library. These logs contain the dates and descriptions of verbal and written communications between ICE and Congress. These logs can be accessed at the links below:

OCR Call Log, <http://www.ice.gov/doclib/foia/reports/ocr-call-log-jan2011-april2012.pdf>
OCR Correspondence Log, <http://www.ice.gov/doclib/foia/reports/ocr-call-log-jan2011-april2012.pdf>

Information concerning ICE's Secure Communities Program is publicly available at http://www.ice.gov/secure_communities/. Available information includes briefings for state and local law enforcement officials, and statistics.

Additional information about ICE's Secure Communities Program is available in the FOIA Library at www.ice.gov/foia/library/ under the "Secure Communities" link.

Appeal Rights

You have the right to appeal ICE's determinations. Should you wish to do so, send your appeal and a copy of this letter to: U.S. Immigration Customs Enforcement, Office of the Principal Legal Advisor, U.S. Department of Homeland Security, Freedom of Information Office, 500 12th Street, S.W., Stop 5009 Washington, D.C. 20536-5009, and follow the procedures outlined in the DHS regulations set forth at 6 C.F.R. § 5.9. Your appeal must be received within 60 days of the date of this letter. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at www.dhs.gov/foia.

The Office of Government Information Services (OGIS) mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you wish to contact OGIS, you may email them at ogis@nara.gov or call (877) 684-6448.

If you need to contact our office about this matter, please refer to case number **2013FOIA08088**.
This office can be reached at (866) 633-1182.

Sincerely,

The image shows a handwritten signature in black ink. The signature is stylized, starting with a large 'M' and ending with a long horizontal stroke. To the right of the signature, the word 'FOR' is written in a similar handwritten style.

Catrina M. Pavlik-Keenan
FOIA Officer

Enclosure: Your December 21, 2012 FOIA Request
Form G-639, 2 pages

ASIAN
LAW CAUCUS



MEMBER OF
ASIAN AMERICAN CENTER
FOR ADVANCING JUSTICE

December 21, 2012

VIA OVERNIGHT MAIL AND EMAIL

FOIA Office
U.S. Immigration and Customs Enforcement
800 North Capitol St., NW
5th Floor, Suite 585
Washington, DC 20536
ICE-FOIA@ice.dhs.gov

RE: Freedom of Information Act Request

Dear ICE FOIA Unit:

This is a request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 on behalf of the Asian Law Caucus ("Requester"). We ask that you please direct this request to all appropriate offices and departments within the agency.

A. RECORDS REQUESTED

1. We request any and all Records related to communications within ICE, and between ICE and the following persons/entities and categories of persons/entities regarding California's Transparency and Responsibility Using State Tools ("TRUST") Act (passed in the California Senate and Assembly in August 2012 as Assembly Bill 1081 and reintroduced in the Assembly on December 3, 2012 as Assembly Bill 4) from February 18, 2011 to the present:

- a. The Office of California Governor Jerry Brown
- b. The Office of California Attorney General Kamala Harris
- c. The White House
- d. Non-governmental organizations
- e. California law enforcement officials (including the California Sheriff's Association, California Sheriffs, and California Police Chiefs)
- f. Members of the United States Congress
- g. Members of the Press

For each person/entity and category of person/entity, we seek Records of the communications themselves, as well as any other Records related to the communications.

ASIAN LAW CAUCUS
In Defense of Civil Rights
55 Columbus Ave., San Francisco, CA 94111
Direct: (415) 848-7719 / Fax: (415) 896-1702
Website: www.alc.advancingjustice.org / E-mail: angelac@asianlawcaucus.org

Page 2 of 5, RE: Freedom of Information Act Request

2. We request any and all Records related to communications within ICE, and between ICE and the following persons/entities and categories of persons/entities regarding ICE holds (also known as ICE detainees) and/or the Secure Communities Program in California from February 18, 2011 to the present:

- a. The Office of California Governor Jerry Brown
- b. The Office of California Attorney General Kamala Harris
- c. The White House
- d. Non-governmental organizations
- e. California law enforcement officials (including the California Sheriff's Association, California Sheriffs, or California Police Chiefs)
- f. Members of the United States Congress
- g. Members of the press

For each person/entity and category of person/entity, we seek Records of the communications themselves, as well as any other Records related to the communications.

As used herein, the term "Record" includes, but is not limited to, all records or communications preserved in electronic or written form, such as correspondences, text messages, cell phone records, telephone records, emails, documents, data, videotapes, audio tapes, faxes, files, guidance, guidelines, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, legal opinions, protocols, reports, rules, technical manuals, technical specifications, training manuals, studies, or any other Record of any kind.

B. THE REQUESTER

Founded in 1972, the Asian Law Caucus is the nation's first legal and civil rights organization serving the low-income Asian and Pacific Islander (API) communities. The ALC focuses on housing rights, immigration and immigrants' rights, labor and employment issues, voting rights, civil rights and national security, and criminal justice reform. The mission of the Asian Law Caucus is to promote, advance, and represent the legal and civil rights of API communities. Recognizing that social, economic, political and racial inequalities continue to exist in the United States, the Asian Law Caucus is committed to the pursuit of equality and justice for all sectors of our society, with a specific focus directed toward addressing the needs of low-income, immigrant and underserved APIs. The ALC is one of several non-governmental organizational sponsors of the TRUST Act.

C. EXPEDITED PROCESSING

Expedited processing of this request is necessary both because there is a "compelling need" for the information, 5 U.S.C. § 552(a)(6)(E)(i)(I), and because there is "[a]n urgency to inform the public about an actual or alleged federal government activity" and the request is "made by a person primarily engaged in disseminating information." 6 C.F.R. § 5.5.

This request concerns the California TRUST Act. The TRUST Act was approved by the California Assembly and Senate in August 2012, vetoed by the Governor on September 30, 2012, and reintroduced in the California Assembly on December 3, 2012. It is currently the subject of intense media and public attention at both the state and national level.¹ The TRUST Act seeks to restore trust between police and immigrant communities in the wake of the controversial Secure Communities deportation program. Although ICE originally described Secure Communities as a program to target serious criminals, the majority of the over 82,000 Californians deported through the program have either never been convicted of any offense, or have only minor misdemeanor convictions.² As a result of Secure Communities, an arrest for driving without a license can end with the separation of a family, and immigrant communities are reluctant to report crime or cooperate with the police for fear of deportation. The TRUST Act seeks to address these problems by limiting compliance with ICE detainer requests to cases involving serious or violent crimes. Governor Brown has expressed his interest in working with advocates and the Legislature to amend the TRUST Act so that it can be passed into law in 2013.³

The public has a compelling need to know what ICE communicated to California officials and the public regarding the TRUST Act and Secure Communities, the deportation program that provided the impetus for the TRUST Act. ICE has previously provided misleading information to Californians regarding Secure Communities.⁴ ICE continues to put heavy pressure on jurisdictions that have passed policies similar to the TRUST Act.⁵ Given ICE's record, and the importance of this

¹ See, e.g., Araceli Martinez Ortega, *Más presión por el Acta de Confianza*, La Opinion, Nov. 28 2012, available at www.laopinion.com/Mas-presion-por-el-Acta-de-Confianza; Leslie Berestein Rojas, *California's 'anti-Arizona' TRUST Act is back for another round*, KPCC, Dec. 3, 2012, at <http://www.scpr.org/blogs/multiamerican/2012/12/03/11368/californias-anti-arizona-trust-act-back-another-ro/>; Amy Taxin, *Immigrant advocates blast Brown vetoes in Calif.*, Associated Press, Oct. 1, 2012, available at http://hosted2.ap.org/txdam/54828a5e8d9d48b7ba8b94ba38a9ef22/Article_2012-10-01-US-California-Immigrant-Rights/id-cbb8f6ed91394e589005b394e614dda6; Mary Slosson, *California governor vetoes bill curbing deportation checks*, Reuters, Oct. 1, 2012, available at <http://www.reuters.com/article/2012/10/01/us-usa-california-immigration-idUSBRE89004K20121001>; Patrick McGreevy and Anthony York, *Brown acts on driver's license, deportation bills*, Los Angeles Times, Oct. 1, 2012, available at <http://www.latimes.com/news/local/la-me-brown-bills-20121001,0,4581699.story>; *Calif gov. OKs bill on illegal immigrant licenses*, USA Today, Oct. 1, 2012, available at <http://www.usatoday.com/story/news/nation/2012/10/01/calif-gov-oks-bill-on-illegal-immigrant-licenses/1605291/>; Oped, *Cardinal Mahony: Yes to the TRUST Act*, Los Angeles Times, Sept. 28, 2012; Lawrence Downes, *Gov. Brown Should Sign the Trust Act*, New York Times, Sept. 26, 2012, available at <http://takingnote.blogs.nytimes.com/2012/09/26/gov-brown-should-sign-the-trust-act/>.

² See Secure Communities Nationwide Interoperability Statistics, available at http://www.ice.gov/doclib/foia/sc-stats/nationwide_interop_stats-fy2012-to-date.pdf

³ See AB 1081 Veto Message, available at http://gov.ca.gov/docs/AB_1081_Veto_Message.pdf; see also Amy Taxin, *Immigrant advocates blast Brown vetoes in Calif.*, supra note 1.

⁴ See *NDLON v. ICE*, 811 F. Supp. 2d 713, 742 (S.D.N.Y. 2011) (finding "ample evidence that ICE and DHS have gone out of their way to mislead the public about Secure Communities"); compare Memorandum of Agreement between DHS, ICE, and California Dep't of Justice, available at http://www.ice.gov/doclib/foia/secure_communities-moa/california-sc-moa.pdf (describing Secure Communities as "a comprehensive ICE initiative . . . to identify, detain, and remove from the United States aliens who have been convicted of serious offenses") with Secure Communities Nationwide Interoperability Statistics, available at http://www.ice.gov/doclib/foia/sc-stats/nationwide_interop_stats-fy2012-to-date.pdf (showing that over half of all Californians deported through Secure Communities had either no criminal history or only misdemeanor convictions).

⁵ See Elise Foley, *TRUST Act Vetoed: California Gov. Jerry Brown Calls Limits on Immigration Enforcement 'Flawed'*, Huffington Post, Oct. 1, 2012, available at http://www.huffingtonpost.com/2012/10/01/trust-act-veto-jerry-brown_n_1928444.html

Page 4 of 5, RE: Freedom of Information Act Request

issue to Californians, there is a compelling need for public oversight of communications between ICE and California officials regarding the TRUST Act. This need is exactly what the FOIA was designed to vindicate.⁶

It is urgent that Requester obtains the requested information in a timely fashion. Assemblymember Ammiano reintroduced the TRUST Act on December 3, 2012, and Governor Brown has indicated that "He is willing to work with stakeholders to address major concerns and improve [the bill]."⁷ Requester needs prompt access to the requested documents in order to ensure the public's ability participate in the on-going work on this bill in an informed manner.

Requester will disseminate all information obtained through this request to the public. Indeed, Requester maintains a website that receives many visits, analyzes public records regarding ICE holds and Secure Communities, and widely publishes and disseminates that information to the press and to the public.⁸

D. FEE WAIVER

Requester is entitled to a waiver of all costs because disclosure of the Records sought "is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). Requester is also entitled to a waiver of all costs because it is a representative of the news media. 6 C.F.R. § 5.11(d)(1).

As described above, the TRUST Act is currently the subject of intense media and public attention, both in California and throughout the country. The records sought here will significantly contribute to public knowledge about the TRUST Act. Requester is well situated to disseminate the information gained from this request to the general public. Requester, a not-for-profit organization, has no commercial interest in these records. As also described above, in accordance with their general practice, Requester plans to disseminate records disclosed as a result of this FOIA request to the public.

E. CERTIFICATION

The Requester certifies that the above information is true and correct to the best of its knowledge. See 6 C.F.R. § 5.5(d)(3).

⁶ See, e.g., *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1979) (affirming the public's right to be part of "an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed").

⁷ Amy Taxin, *Immigrant advocates blast Brown vetoes in Calif.*, supra note 1.

⁸ For example, the Asian Law Caucus maintains, in partnership with other organizations, a heavily visited website that disseminates information, including information obtained through the FOIA, to the public about the Secure Communities deportation program. See www.asianlawcaucus.org. The Asian Law Caucus also regularly publishes factsheets, briefing guides, and other materials, which it disseminates widely to the public through print and online. See, e.g., www.asianlawcaucus.org/publications.

Page 5 of 5, RE: Freedom of Information Act Request

If this request is denied in whole or in part, we ask that you justify all redactions by reference to specific FOIA exemptions. Please specify the search that was undertaken to locate records responsive to this request. We expect you to release all segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information or to deny expedited processing or a waiver of fees.

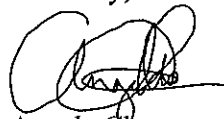
We look forward to your response to our request for expedited processing within ten (10) business days, as required under 5 U.S.C. § 552(a)(6)(E)(ii)(I). Should our request for expedited processing be denied, we expect to receive your response to this request within twenty (20) business days, as required under 5 U.S.C. § 552(a)(6)(A)(I).

If any records are available in electronic form, please furnish them in electronic form. Please furnish all responsive Records to:

Angela F. Chan
Asian Law Caucus
55 Columbus Avenue
San Francisco, CA 94111
Fax: 415.896.1702
Tel: 415.848.7719
E-mail: angelac@asianlawcaucus.org

If you have any questions regarding the processing of this request, please contact Angela Chan at 415.848.7719 or angelac@asianlawcaucus.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'Angela Chan', is written over a circular stamp or seal.

Angela Chan
Senior Staff Attorney

OMB No. 1615-0102; Expires 01/31/2015

Department of Homeland Security
U.S. Citizenship and Immigration Services

Form G-639, Freedom of Information/Privacy Act Request

NOTE: Use of this form is optional. Any written format for a Freedom of Information or Privacy Act request is acceptable.

START HERE - Type or print in black ink. Read instructions before completing this form.

1. Type of Request (Check appropriate box. **NOTE:** If you are filing this request for records on behalf of another individual, please respond to Number 1 as it would apply to that individual.)

- ☐ Freedom of Information Act (FOIA): I am not a U.S. citizen/Lawful Permanent Resident and I am requesting my own records.
- ☐ Freedom of Information Act (FOIA): I am a U.S. citizen/Lawful Permanent Resident and I am requesting documents other than my own records.
- ☐ Privacy Act (PA): I am a U.S. citizen/Lawful Permanent Resident and I am requesting my own records.
- ☐ Amendment of Record (PA only): I am a U.S. citizen/Lawful Permanent Resident and I am requesting amendment of my own records.
- ☐ Other: _____

2. Description of Record(s) Requested:

NOTE: While you are not required to respond to all items in Number 2, failure to provide complete and specific information as requested may result in a delay in processing or an inability to locate the record(s) or information requested.

- ☐ Complete Alien File (A-File)
- ☐ Other (please specify): _____

Purpose: (Optional: You are not required to state the purpose of your request. However, doing so may assist USCIS in locating the record(s) needed to respond to your request.)

Family Name (Last Name)				Given Name (First Name)		Middle Name	
Other Names Used (if any)				Name at time of entry into the U.S.		I-94 Admission #	
Alien Registration Number (A#)		Petition or Claim Receipt #		Country of Birth		Date of Birth (mm/dd/yyyy)	

Names of other family members that may appear on requested record(s) (i.e., spouse, daughter, son):

Family Member's Name: Given Name (First Name)		Middle Name	Family Name (Last Name)	Relationship
Father's Name: Given Name (First Name)		Middle Name	Family Name (Last Name)	
Mother's Name: Given Name (First Name)		Middle Name	Family Name (Last Name, including Maiden Name)	
Country of Origin (Place of Departure)		Port of Entry Into the U.S.		Date of Entry (mm/dd/yyyy)
Manner of Entry (Air, Sea, Land)		Mode of Travel (Name of Carrier)		

3. Subject of Record Consent to Release Information *(Must be signed by the subject of record(s) requested.)*

By my signature, I consent to allow USCIS to release to the requester named in Number 5 (Check applicable box):

- ☐ All of my records ☐ A portion of my records *(If a portion, specify below what part, i.e., copy of application.)*

Print Name of Subject of Record _____

Signature of Subject of Record _____

Date (mm/dd/yyyy) _____

- ☐ Deceased Subject - **Proof of death must be attached** *(Obituary, Death Certificate, or other proof of death required)*

4. Verification of Identity *(Required; Fill out all that apply.)*

Name of Subject of Record <i>(First, Middle, Last)</i>		Daytime Telephone	E-mail Address
Address <i>(Street Number and Name)</i>		Apt. Number	
City	State	Zip Code	
Date of Birth <i>(mm/dd/yyyy)</i>	Place of Birth		

The Subject of Record must provide a signature under either a Notarized Affidavit of Identity or a Sworn Declaration Under Penalty of Perjury:

- ☐ Notarized Affidavit of Identity

Signature of Subject of Record _____

Date (mm/dd/yyyy) _____

Subscribed and sworn to before me this _____ day of _____

Telephone No. _____

Signature of Notary _____

My Commission Expires on _____

OR

- ☐ Sworn Declaration Under Penalty of Perjury

Executed outside the United States

If executed outside the United States: "I declare (certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct."

Executed in the United States

If executed within the United States, its territories, possessions, or commonwealths: "I declare (certify, verify, or state) under penalty of perjury that the foregoing is true and correct."

Signature of Subject of Record _____

Signature of Subject of Record _____

5. Requester InformationBy my signature, I consent to pay all costs incurred for search, duplication and review of materials up to \$25 *(See instructions)*

Signature of Requester: _____

Name of Requester <i>(Fill out if different from the Subject of Record.)</i>		Daytime Telephone	E-mail Address
Address <i>(Street Number and Name)</i>		Apt. Number	
City	State	Zip Code	

EXHIBIT D



Jennifer Chin <jfchin.clinic@lawnet.uci.edu>

Asian Law Caucus' FOIA Request to ICE [13-8088]

Law, Ryan A <Ryan.A.Law@ice.dhs.gov>

Tue, Jan 29, 2013 at 1:59 PM

To: "jfchin.clinic@lawnet.uci.edu" <jfchin.clinic@lawnet.uci.edu>

Cc: "jkarp@ndlon.org" <jkarp@ndlon.org>, "Graff, Mark H" <Mark.H.Graff@ice.dhs.gov>

Ms. Chin:

I've received your revised FOIA request on behalf of the Asian Law Caucus. At your convenience, I would like to discuss the scope of your amended request. Are you available sometime on Wednesday, 1/30? Thanks,

Ryan Law

Deputy FOIA Officer

U.S. Immigration and Customs Enforcement

(202) 732-5600

EXHIBIT E



Jennifer Chin <jfchin.clinic@lawnet.uci.edu>

Asian Law Caucus' FOIA Request to ICE [13-8088]

Law, Ryan A <Ryan.A.Law@ice.dhs.gov>

Fri, Feb 8, 2013 at 6:46 AM

To: Jennifer Chin <jfchin.clinic@lawnet.uci.edu>

Cc: Jessica Karp <jkarp@ndlon.org>, "angelac@asianlawcaucus.org" <angelac@asianlawcaucus.org>

Ms. Chin:

Thank you for taking the time to speak with me today about your client's FOIA request.

A summary of our conversation is below:

1. Please confirm whether or not your client is willing to drop the "Office of Professional Responsibility" and the "Office of Detention Policy and Planning" from item one of the request. As we discussed, in my experience, these offices would not likely maintain records that would be responsive to item one of ALC's request.
2. We have added the ICE Office of Public Affairs to item one of ALC's request.
3. Please inform me whether or not ALC is willing to further narrow the scope of item two of the request. Please consider providing combinations of search terms that would help us identify the specific records you are seeking. As we discussed, a search for records concerning "detainers" or "secure communities" would likely return tens-of-thousands of potentially responsive records.

ICE will begin searching for records that are potentially responsive to item one of ALC's request. As searches for these records are completed, we will release records on a "rolling" basis. We will hold item two of your request in abeyance pending your response.

Respectfully,

Ryan Law

Deputy FOIA Officer

U.S. Immigration and Customs Enforcement

(202) 732-5600

From: Jennifer Chin [mailto:jfchin.clinic@lawnet.uci.edu]

Sent: Tuesday, February 05, 2013 12:23 PM

To: Law, Ryan A

Cc: Jessica Karp

[Quoted text hidden]

[Quoted text hidden]

EXHIBIT F



Jennifer Chin <jfchin.clinic@lawnet.uci.edu>

Asian Law Caucus' FOIA Request to ICE [13-8088]

Jennifer Chin <jfchin.clinic@lawnet.uci.edu>

Tue, Feb 12, 2013 at 12:52 PM

To: "Law, Ryan A" <Ryan.A.Law@ice.dhs.gov>

Cc: Jessica Karp <jkarp@ndlon.org>

Bcc: Jeffery Graham <jrgraham.clinic@lawnet.uci.edu>, Cristina Salvato <csalvato.clinic@lawnet.uci.edu>

Dear Mr. Law,

Thank you for this summary and for speaking to us on Thursday. We will confer with our client, the Asian Law Caucus, and get back to you regarding the two offices you mention in the first point of your summary as well as whether ALC is willing to narrow the scope of item 2 of its request. We could use additional clarification, however, on one point. On our call, you said that ICE would be willing to consider granting a conditional fee waiver as to item one of the request, provided ALC agreed to drop the Office of Professional Responsibility and the Office of Detention Policy and Planning and provided an additional statement describing why disclosure of the requested documents is in the public interest. You also said ICE would reconsider granting a conditional fee waiver as to item two of the request if ALC narrows the scope of that item. Can you please confirm that and let us know what you mean by "conditional" fee waiver?

Sincerely,

Jennifer Chin

Ryan Graham

Cristina Salvato

Jessica Karp, Supervising Attorney

UC Irvine School of Law

[Quoted text hidden]

EXHIBIT G



Jennifer Chin <jfchin.clinic@lawnet.uci.edu>

Asian Law Caucus' FOIA Request to ICE [13-8088]

Law, Ryan A <Ryan.A.Law@ice.dhs.gov>

Wed, Feb 20, 2013 at 6:59 AM

To: Jennifer Chin <jfchin.clinic@lawnet.uci.edu>

Cc: Jessica Karp <jkarp@ndlon.org>

Hi Jennifer – sorry that I have not yet responded to your email. I will try to do so by this Friday. Thanks

Ryan Law

Deputy FOIA Officer

U.S. Immigration and Customs Enforcement

(202) 732-4116

From: Jennifer Chin [mailto:jfchin.clinic@lawnet.uci.edu]

Sent: Tuesday, February 12, 2013 3:53 PM

[Quoted text hidden]

[Quoted text hidden]

EXHIBIT H

UNIVERSITY OF CALIFORNIA, IRVINE

BERKELEY • DAVIS • IRVINE • LOS ANGELES • MERCED • RIVERSIDE • SAN DIEGO • SAN FRANCISCO



SANTA BARBARA • SANTACRUZ

UCI Law Clinic
School of Law

PO Box 5479
Irvine, CA 92616-5479
(949) 824-9660

February 22, 2013

VIA EMAIL

FOIA Office

U.S. Immigration and Customs Enforcement
800 North Capitol St., NW
5th Floor, Suite 585
Washington, DC 20536
Ryan.A.Law@ice.dhs.gov

**RE: AMENDED Freedom of Information Act Request
ICE FOIA Case Number 2013FOIA08088**

Dear Mr. Law:

We write on behalf of the Asian Law Caucus (ALC) to request an update on ALC's December 21, 2012 request for information under the Freedom of Information Act (the "Request").

As you know, on January 8, 2013, ALC received an initial response from ICE FOIA officer Catrina Pavlik-Keenan¹ claiming that ALC's request was "overly broad" and inviting us to schedule an appointment to speak with ICE FOIA staff to perfect ALC's request. In response, we spoke to Mark Graff, who requested that we amend the Request by excluding ICE components that ALC was not interested in searching. Though we scheduled a follow-up phone call with Mr. Graff, he was not available at that time. We submitted an amended request responsive to Mr. Graff's recommendations on January 25, 2013.

On January 29, we received an email from you requesting that we schedule a call to discuss the scope of the amended request. On February 7, 2013, we spoke by phone and you agreed to do two things: 1) begin searches immediately in response to part 1 of the Amended Request, releasing documents on a rolling basis; 2) add the Office of Public Affairs to the list of offices that would be searched by your office. It has now been over two weeks since our call, and we have yet to receive any responsive documents.

On the same phone conversation, you also requested three things: 1) that ALC remove the Office of Detention Planning and Policy (ODPP) and the Office of Professional Responsibility (OPR) from the scope of Part 1 of the amended request; 2) that ALC provide an additional statement of the public interest purpose of its request to assist with fee waiver re-consideration, and 3) that

¹ The letter is dated January 3, 2013.

ALC provide additional clarification regarding the scope of records sought in regard to Parts 2 and 3 of ALC's Amended Request. Our responses to these requests follow:

Removing the ODPP & OPR from Part 1 of ALC's amended request

We have conferred with ALC, and are willing to remove the ODPP from the Amended Request, to the extent that the ODPP deals with detention reform and conditions of confinement, as you indicated on our January 7 phone call. Regarding the OPR, we are willing to remove this office from the Amended Request to the extent that the OPR deals with investigations of employee misconduct. We understand, however, that OPR may conduct independent reviews of Immigration and Customs Enforcement programs, and expect that any reviews or communications regarding such reviews relevant to Part 1 of the Amended Request will be included in the search. We agree to remove these two offices with the understanding that removing these offices as you request will facilitate faster receipt of the search results. However, we also reiterate that ICE may not “ignore what it cannot help but know,” and thus will not disregard any obvious leads for responsive documents maintained by these two offices.²

Additional statement of public interest purpose for fee waiver re-consideration

It continues to be our position that ALC's original statement of public interest clearly established its eligibility for a full fee waiver, both as a representative of the news media and because the Request is in the public interest. As you are aware, we are pursuing an administrative appeal of ICE's January 8 denial of ALC's fee waiver request. In addition, we offer the following statement in response to your request for an additional statement of public interest for fee waiver re-consideration:

ALC's Request seeks records regarding the TRUST Act, pending state legislation that would hugely alter the relationship between California law enforcement agencies and ICE. Publicly, ICE took no position on the bill. But ICE has previously attempted to exercise behind-the-scenes pressure to influence state and local policies that, like the TRUST Act, limit responses to ICE holds.³ Disclosure of information about whether ICE exercised similar pressure with respect to the TRUST Act—and what form that pressure took—is firmly within the public interest because it will shed light on federal efforts to impact state policy on immigration enforcement, a subject of widespread and deep public interest.⁴

² *Kowalczyk v. Department of Justice*, 73 F.3d 386, 389 (D.C. Cir. 1996), *see also National Resources Defense Council v. U.S. Dept. of Defense*, 388 F.Supp.2d 1086, 1102 (C.D. Cal. 2005) (ordering the Department of Defense to search the Air Force for records responsive to a FOIA request, even though the requester did not request records from the Air Force, where the Department of Defense knew that the Air Force had substantial numbers of responsive documents and the requester did not know that Air Force had responsive documents).

³ *See, e.g. Elise Foley, TRUST Act Vetoed: California Gov. Jerry Brown Calls Limits on Immigration Enforcement 'Flawed,' Huffington Post*, Oct. 1, 2012, *available at* http://www.huffingtonpost.com/2012/10/01/trust-act-veto-jerry-brown_n_1928444.html (describing ICE attempts to influence ICE hold policy in Cook County, IL).

⁴ *See, e.g., Hernandez v. U.S. Customs and Border Protection Agency*, 2012 WL 398328, *9 (E.D.La 2012) (recognizing that “[t]here is . . . widespread public debate on the . . . issue of

Indeed, any and all documents relating to the TRUST Act within the possession of ICE will contribute meaningfully to public understanding by shedding light on ICE's as-yet-unpublicized position on and actions with respect to California's attempt to limit its involvement in immigration enforcement.

The TRUST Act is California's response to a widely shared concern that the Secure Communities program and the associated increase in issuance of ICE holds have endangered public safety and destroyed trust between police and immigrant communities.⁵ This concern was shared by the majority of California State Assemblymembers and Senators, as demonstrated by their votes in favor of the TRUST Act last year. These votes demonstrate the importance of this issue to the public. Disclosure of documents regarding Secure Communities and detainer policy in California will contribute to the public understanding of how these programs operate in the state and, accordingly, will inform the concerns that propelled last year's vote on the TRUST Act, and that will decide the bill's future.

Additional Clarification regarding Parts 2 and 3 of ALC's Amended Request

Again, we maintain that the original and amended Requests were both sufficiently narrow to meet the 6 C.F.R. §5.3(b) requirement of reasonably describing the records we seek, and reserve all of our statutory rights with respect to our original request.

However, to assist your office with tailoring a search, we will add the following clarification to our Amended Request⁶: With respects to Part 2 and 3 of the Original Request, ALC seeks records containing and related to communications regarding ICE hold (or ICE detainer) or Secure Communities policy, procedure, policy reform, and policy changes in California, including, but not limited to, federal, state, or local policies to limit issuance of or responses to ICE holds in California.

Urgency

As described in the Request, ALC and the public have an urgent need to obtain the requested documents in a timely fashion. The TRUST Act has been reintroduced in the California legislature, and may be voted on at any time. A wide coalition of advocacy and community organizations throughout the state is meeting on a regular basis to discuss the bill, and Assemblymembers, Senators, and the Governor are all considering their positions. The requested information is essential to informing this ongoing debate.

We appreciate your willingness to engage with us about our Request, but we are concerned that over two months have passed since we submitted the Request, and we have still received no documents. In order to ensure that the documents are obtained when they are most useful and

whether and to what extent local police should be involved with federal immigration enforcement efforts").

⁵ See A.B. 1080 Fact Sheet, available at <http://caimmigrant.org/document.html?id=451>.

⁶ You suggested providing either search terms or further information regarding the type of information ALC is seeking as a means of clarifying Part 2 and Part 3 of the request. The above is intended as further information, not as search terms.

relevant, we ask that you complete the rolling production of documents responsive to Parts 1, 2, and 3 of ALC's request by March 15, 2013. Should we fail to receive the requested documents by that date, we may be required to pursue other options, including litigation, to protect the right of ALC and the public to access these essential public records.

Sincerely,

/s/

Jessica Karp
Adjunct Professor of Law
UC Irvine School of Law
Immigrant Rights Clinic

Jennifer Chin
Ryan Graham
Cristina Salvato
Certified Law Students
UC Irvine School of Law
Immigrant Rights Clinic

Sameer Ashar
Director
UC Irvine School of Law
Immigrant Rights Clinic

Attorneys for Asian Law Caucus

EXHIBIT I

UNIVERSITY OF CALIFORNIA, IRVINE

BERKELEY • DAVIS • IRVINE • LOS ANGELES • MERCED • RIVERSIDE • SAN DIEGO • SAN FRANCISCO



SANTA BARBARA • SANTACRUZ

UC Irvine Law Clinic
School of Law

PO Box 5479
Irvine, CA 92616-5479
(949) 824-9660

February 26, 2013

VIA FED EX

U.S. Immigration and Customs Enforcement
Office of the Principal Legal Advisor
U.S. Department of Homeland Security
Freedom of Information Office
500 12th Street, S.W., Stop 5009
Washington, D.C. 20536-5009¹

**Re: Freedom of Information Act Appeal of the Immigration and Customs
Enforcement Agency's Denial of a Fee Waiver and Expedited Processing for
FOIA Case 2013FOIA08088**

To Whom It May Concern:

This is a Freedom of Information Act (FOIA) appeal of the determination of the Immigration and Customs Enforcement agency (ICE) to deny a fee waiver and expedited processing for FOIA request 2013FOIA08088.

The Asian Law Caucus ("ALC" or "Requester") seeks records in ICE's possession relating to communications within ICE and between ICE and other entities about California's Transparency and Responsibility Using State Tools (TRUST) Act, ICE detainees in California, and the Secure Communities Program in California. As described in the initial request ("Request"), ALC seeks this information in order to inform the public and promote transparency about the ICE's role in responding to and influencing state and local policy on immigration enforcement in California.

Background

On December 21, 2012, ALC submitted a request for records in the possession of ICE regarding the following: (1) California's Transparency and Responsibility Using

¹ Requester notes that this address, provided by ICE in its letter dated January 3, 2013, differs from the address referenced in Department of Homeland Security regulations for appeals procedures. *Compare* "ICE FOIA Case Number 2013FOIA08088," Exhibit B, *with* 6 C.F.R. § 5.9(a)(1).

State Tools (TRUST) Act,² (2) ICE detainers in California, and (3) the Secure Communities Program in California.³ ALC also sought a waiver of search fees as a representative of the news media under 6 C.F.R. § 5.11(d)(1), a full fee waiver for a request made in the public interest under 6 C.F.R. §§ 5.11(c), (k), and expedited processing under 6 C.F.R. § 5.5(d)(1).

On January 3, 2013, ICE denied ALC's requests for a fee waiver and for expedited processing, but sought more information regarding the scope of ALC's substantive request.⁴

On January 25, 2013, ALC submitted an amended request regarding the substantive scope of the requested records and stated its intent to appeal the denials of a fee waiver and expedited processing.⁵

I. Requester is Entitled to a Fee Waiver

Requester is entitled to a fee waiver on two grounds. First, Requester qualifies as a representative of the news media. Second, disclosure of the requested information is in the public interest.

A. Requester is Entitled to a Waiver of Search Fees as a Representative of the News Media

In its initial Request, ALC stated that it is entitled to a waiver of search fees as a representative of the news media and that ALC "plans to disseminate records disclosed as a result of this FOIA request to the public."⁶ ICE denied ALC's request for news media status on the ground that ALC had "not presented a convincing argument" that it is an entity organized and operated to publish or broadcast news to the public.⁷

² This bill is currently pending before the California Legislature. A.B. 1081, 2011–12 Leg., Reg. Sess. (Cal. 2012) (reintroduced as A.B. 4, 2013–14 Leg., Reg. Sess. (Cal. 2013)).

³ See "Freedom of Information Act Request," Exhibit A.

⁴ See "ICE FOIA Case Number 2013FOIA08088," Exhibit B.

⁵ See "Amended Freedom of Information Act Request," Exhibit C.

⁶ See *supra* note 1, Exhibit A.

⁷ See *supra* note 4, Exhibit B.

However, ALC qualifies as a “representative of the news media” as defined under both the FOIA and Department of Homeland Security (DHS) regulations.⁸ A “representative of the news media” is defined in DHS regulations as “any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public.”⁹ ALC meets this definition because it regularly gathers and disseminates news to the general public. As explained in ALC’s Request, ALC maintains, in partnership with other organizations, a heavily visited website that disseminates information, including information obtained through the FOIA, to the public about the Secure Communities deportation program.¹⁰ ALC also regularly publishes factsheets, briefing guides, and other materials, which it disseminates widely to the public through print media and online.¹¹

Further, ALC meets the definition of a “representative of the news media” under the FOIA because it is “an entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience.”¹² The FOIA also recognizes that alternative media are considered news-media entities and the history of the requester’s past publications is relevant to the determination of news media status.¹³ As demonstrated by the materials currently available on ALC’s website, ALC has published reports, press releases, articles, blog posts, and newsletters as well as other educational and informational materials, which it routinely and widely disseminates to the public through its website, blog, and other channels. This is exemplified by the following documents:

- **An electronic newsletter, which is distributed regularly to subscribers, including members and supporters.**¹⁴
- **A blog maintained by ALC staff members, which reports original content.**¹⁵

⁸ 5 U.S.C. § 552(a)(4)(A)(ii)(II); 6 C.F.R. § 5.11(d)(1).

⁹ 6 C.F.R. § 5.11(b)(6).

¹⁰ See ASIAN LAW CAUCUS, <http://www.asianlawcaucus.org>, Exhibit D.

¹¹ See, e.g., *Publications*, ASIAN LAW CAUCUS, <http://www.asianlawcaucus.org/news-media/publications>, Exhibit E.

¹² 5 U.S.C. § 552(a)(4)(A)(ii).

¹³ *Id.*

¹⁴ Archived copies can be viewed here: *E-Newsletter Archive*, ASIAN LAW CAUCUS, <http://www.asianlawcaucus.org/news-and-media/e-newsletter-archive>. Sample E-Newsletters are provided as Exhibit F.

- **Factsheets, briefing guides, educational brochures, and pamphlets designed to educate the public about civil rights issues and government policies that implicate civil rights and liberties.**¹⁶
- **A heavily-visited website, www.asianlawcaucus.org, which addresses civil rights and civil liberties issues in depth, provides features on these issues in the news, and contains many thousands of documents relating to the issues ALC focuses upon, including features on information obtained through the FOIA.**¹⁷

As stated in its original Request, ALC intends to use these methods to disseminate the information it obtains through this request to the general public.¹⁸

ALC also qualifies for news media status precisely because it engages in news media activities in furtherance of its advocacy goals as a civil rights organization. ALC aims to contribute to public knowledge about news on particular subjects, is well situated to disseminate information, and disseminates news as part of its general practice. In denying ALC's fee waiver, ICE stated that ALC is not a representative of the news media because it identifies itself as a civil rights organization.¹⁹ However, civil rights organizations are regularly granted news representative status under the FOIA. For example, a number of federal courts have held that the American Civil Liberties Union and other civil rights organizations are entities that qualify for news media status under the FOIA.²⁰ News media status for the purposes of a FOIA fee waiver provision has

¹⁵ See *Blog*, ASIAN LAW CAUCUS, <http://www.asianlawcaucus.org/news-media/blog>, Exhibit G.

¹⁶ See, e.g., Asian Law Caucus, Educators for Fair Consideration, DreamActivist.org & National Immigrant Youth Alliance, *Education Not Deportation: A Guide for Undocumented Youth in Removal Proceedings*, available at <http://www.asianlawcaucus.org/sites/asian-law-caucus/files/Education-Not-Deportation-A-Guide-for-Undocumented-Youth-in-Removal-Proceedings-2.pdf>, Exhibit H.

¹⁷ See, e.g., CROP – FOIA Documents, available at <http://www.asianlawcaucus.org/crop---foia-documents>, Exhibit I.

¹⁸ See *supra* note 1, Exhibit A.

¹⁹ See *supra* note 4, Exhibit B.

²⁰ See, e.g., *ACLU of Wash. v. Dep't. of Justice*, No. C09-0642RSL, 2011 WL 887731 (W.D. Wash. Mar. 10, 2011); *ACLU v. Dep't of Defense*, 321 F. Supp 2d 24, 30 n.5 (D.D.C. 2004); *Serv. Women's Action Network v. Dep't of Defense*, No. 3:11CV1534 MRK, 2012 WL 3683399 (D. Conn. May 14, 2012) (granting the ACLU and other civil rights organizations news media status for the purposes of a FOIA request to the Department of Defense and Department of Veterans Affairs and noting that "organizations like the ACLU are regularly granted news representative status").

generally been interpreted broadly. For example, an organization that maintained an Internet website that regularly disseminated information to the public was a “representative of the news media” even though the website only sought to make news and generate publicity for the organization.²¹ Even a research institution may be considered a “representative of the news media” for the purposes of a fee waiver for the release of records.²² ALC thus qualifies for news-media status through its advocacy activities as a civil rights organization.

Therefore, based on ALC’s current news activities and history of past publications, ALC’s stated intent to publish the information obtained through this FOIA request, and numerous cases broadly interpreting news media status, ALC qualifies as a representative of the news media for the purposes of a FOIA fee waiver.

B. Requester is Entitled to a Full Fee Waiver because its Request is in the Public Interest

The FOIA provides for a fee waiver “if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.”²³ DHS regulations break the statutory mandate for agency fee waivers into two requirements: (1) disclosure is likely to contribute significantly to public understanding of the operations or activities of the government, and (2) disclosure is not primarily in the commercial interest of the requester.²⁴ ALC’s Request meets both of these requirements and qualifies for a full fee waiver under DHS regulations and the FOIA.

ICE’s denial of ALC’s request for a full fee waiver cites the requirements for a fee waiver and the six enumerated factors DHS provides in its regulations for component agencies to consider in evaluating fee waiver requests, but discusses none of them

²¹ *Judicial Watch, Inc. v. Dept. of Justice*, 133 F. Supp. 2d 52 (D.D.C. 2000).

²² *Nat’l Sec. Archive v. Dept. of Defense*, 880 F.2d 1381, 1382 (D.C. Cir. 1989) (“Unlike merely . . . ‘mak[ing] information available’ in the Archive’s private research institute and library, the Archive’s intended distribution of document sets entails the kind of initiative we associate with ‘publishing or otherwise disseminating’ that information.”).

²³ 5 U.S.C. § 552(a)(4)(A)(iii), 6 C.F.R. § 5.11 (k)(1).

²⁴ 6 C.F.R. § 5.11 (k)(1).

specifically. ICE's response letter states that the examiner has "considered"²⁵ the six factors, and concludes that Requester has "failed to provide a convincing argument that the disclosure" would "significantly contribute to the public's understanding of the government's operations or activities."²⁶ These restatements of the FOIA and DHS regulations, along with a conclusory statement that Requester has failed to satisfy them, are the only rationale ICE has provided Requester for denying its requests for a full fee waiver.

1. First Requirement: Significant Contribution to the Public Interest

DHS regulations provide four factors that component agencies must consider in assessing whether the first requirement is met. Each factor is described below, and supports a finding that Requester was inappropriately denied a fee waiver by ICE.

a. Factor One: Identifiable Operations or Activities of the Federal Government

First, the subject of the requested records must concern identifiable operations or activities of the federal government, with a connection that is "direct and clear, not remote or attenuated."²⁷ With regard to all three substantive areas of Requester's FOIA request—the TRUST Act, ICE detainers, and Secure Communities—Requester seeks records relating to governmental activities. Documents within the possession of ICE relating to the TRUST Act will reveal communications within ICE and between ICE and outside officials regarding the TRUST Act, including any efforts ICE made to influence California officials' stance on the TRUST Act. Documents within the possession of ICE relating to the Secure Communities Program in California will detail the operations of an identifiable federal program: the Secure Communities Program itself. Documents within the possession of ICE relating to ICE detainers in California will detail the specific federal activity of ICE issuing ICE detainers to California law enforcement agencies.

²⁵ See *supra* note 4, Exhibit B at 2.

²⁶ *Id.* at 3.

²⁷ 6 C.F.R. § 5.11 (k)(2)(i).

**b. Factor Two: Likelihood that Disclosure will Contribute to
Understanding of Government Operations or Activities**

The second factor requires that disclosure be *likely* to contribute to an understanding of government operations or activities, adding further that the requested records must be “meaningfully informative” about government operations or activities.²⁸ This factor is clearly met in this case.

Requester seeks records regarding the TRUST Act, pending state legislation that would significantly alter the relationship between California law enforcement agencies and ICE. Publicly, ICE took no position on the bill. But ICE has previously attempted to exercise behind-the-scenes pressure to influence state and local policies that, like the TRUST Act, limit local responses to ICE holds.²⁹ Information about whether ICE exercised similar pressure with respect to the TRUST Act—and what form that pressure took—is deeply meaningful and informative with respect to ICE activities.

Indeed, any and all documents relating to the TRUST Act within the possession of ICE will contribute meaningfully to public understanding by shedding light on ICE’s as-yet-unpublicized position on and actions with respect to California’s attempt to limit its involvement in immigration enforcement.

The TRUST Act is California’s response to a widely shared concern that the Secure Communities program and the associated increase in issuance of ICE holds have endangered public safety and destroyed trust between police and immigrant communities.³⁰ This concern was shared by the majority of California State Assemblymembers and Senators, as demonstrated by their votes in favor of the TRUST Act last year. These votes demonstrate the importance of this issue to the public. Disclosure of documents regarding Secure Communities and detainers in California will contribute to the public understanding of how these programs operate in the state and,

²⁸ 6 C.F.R. § 5.11 (k)(2)(ii).

²⁹ See, e.g., Elise Foley, *TRUST Act Vetoed: California Gov. Jerry Brown Calls Limits on Immigration Enforcement ‘Flawed,’* HUFFINGTON POST, Oct. 1, 2012, http://www.huffingtonpost.com/2012/10/01/trust-act-veto-jerry-brown_n_1928444.html (describing ICE attempts to influence ICE hold policy in Cook County, IL), Exhibit J.

³⁰ See A.B. 1080 Fact Sheet, *available at* <http://caimmigrant.org/document.html?id=451>, Exhibit K.

accordingly, will inform the concerns that propelled last year's vote on the TRUST Act – the very concerns that will decide the bill's future.

**c. Factor Three: Disclosure Must Contribute to the Understanding of
a Broad Spectrum of the Public**

Third, disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the mere individual understanding of the requester.³¹ One consideration, presumptively satisfied by representatives of the news media, is the requester's "expertise in the subject area and ability and intention to effectively convey the information to the public."³² Requester meets the third factor by virtue of its status as a representative of the news media. If the Agency finds Requester does not qualify as a representative of the news media, Requester alternatively incorporates the arguments made in part IA in support of the third factor. Even if the Agency finds that Requester does not qualify as a representative of the news media, Requester meets this factor for the reasons described in part IA above: its expertise in the subject matter of immigration policy, its intention – as stated in the initial request – to convey the requested information to the public, and its ownership of a platform from which to effectively do so.

With respect to the breadth of the audience of persons interested in the subject, there can be no doubt that a broad audience is interested in the TRUST Act, along with the Secure Communities program and the ICE holds that are the motivating factors behind the bill. The TRUST Act has received extensive media coverage.³³ Secure

³¹ 6 C.F.R. § 5.11 (k)(2)(iii).

³² *Id.*

³³ See, e.g., Araceli Martinez Ortega, *Más presión por el Acta de Confianza*, LA OPINION, Nov. 28 2012, available at www.laopinion.com/Mas-presion-por-el-Acta-de-Confianza; Leslie Berestein Rojas, *California's 'anti-Arizona' TRUST Act is back for another round*, KPCC, Dec. 3, 2012, available at <http://www.scpr.org/blogs/multiamerican/2012/12/03/11368/californias-anti-arizona-trust-act-back-another-ro/>; Amy Taxin, *Immigrant advocates blast Brown vetoes in Calif.*, ASSOCIATED PRESS, Oct. 1, 2012, available at <http://newsle.com/article/0/37049349/>; Mary Slosson, *California governor vetoes bill curbing deportation checks*, REUTERS, Oct. 1, 2012, available at <http://www.reuters.com/article/2012/10/01/us-usa-california-immigration-idUSBRE89004K20121001>; Patrick McGreevy & Anthony York, *Brown acts on driver's license, deportation bills*, LA TIMES, Oct. 1, 2012, available at <http://www.latimes.com/news/local/la-me-brown-bills-20121001,0,4581699.story>; *Calif gov. OKs bill on illegal immigrant licenses*, USA TODAY, Oct. 1, 2012, available at

Communities and ICE holds have been debated on the editorial page of the country's major newspapers.³⁴ And the federal courts have recognized that, "At present, there is a vigorous public debate on the topic of targeted immigration enforcement, most notably as to whether such efforts should prioritize aliens with documented criminal histories, as opposed to individuals who have committed only civil immigration law violations There is also widespread public debate on the related issue of whether and to what extent local police should be involved with federal immigration enforcement efforts."³⁵

Because a broad audience of people is interested in the subject of this Request, and Requester is well positioned to convey any disclosed documents to the public, the third factor is satisfied.

d. Factor Four: Disclosure Must Enhance Public Understanding to a Significant Extent

Fourth, disclosure must enhance public understanding of the subject in question "to a significant extent," as compared to public understanding prior to disclosure.³⁶ As described above, ICE took no public position on the TRUST Act. Thus, there is currently *no* public understanding of ICE's role vis a vis the TRUST Act. Any information about ICE's position on the bill and its actions behind the scenes would enhance the public's understanding "to a significant extent." Similarly, the public currently lacks information about whether and how ICE has responded to or otherwise been involved in the many state and local efforts, both nationwide and in California, to establish detainer policies or

<http://www.usatoday.com/story/news/nation/2012/10/01/calif-gov-oks-bill-on-illegal-immigrant-licenses/1605291/>; Op-ed, *Cardinal Mahony: Yes to the TRUST Act*, LA TIMES, Sept. 28, 2012; Lawrence Downes, *Gov. Brown Should Sign the Trust Act*, NY TIMES, Sept. 26, 2012, available at <http://takingnote.blogs.nytimes.com/2012/09/26/gov-brown-should-sign-the-trust-act/>, Exhibit L.

³⁴ See, e.g., Editorial, *The Widening Dragnet*, NY TIMES, August 14, 2011, available at <http://www.nytimes.com/2011/08/15/opinion/the-widening-dragnet.html>; Editorial, *Shelve Secure Communities*, LA TIMES, August 12, 2011, available at articles.latimes.com/2011/aug/12/opinion/la-ed-secure-20110812; Editorial, *Secure Communities: The TRUST Act Fix*, LA TIMES, July 13, 2012, available at <http://articles.latimes.com/2012/jul/13/opinion/la-ed-secure-communities-trust-act-20120713>, Exhibit M.

³⁵ *Hernandez v. U.S. Customs and Border Protection Agency*, 2012 WL 398328, *9 (E.D. La 2012).

³⁶ 6 C.F.R. § 5 11(k)(2)(iv).

otherwise modify the Secure Communities program in California. Any information on those topics would create public understanding where it currently does not exist, and would therefore be “significant.”

2. Second Requirement: Non-Commerciality of Interests

Analysis of the second requirement is guided by two factors: (1) the existence and magnitude of a commercial interest, and (2) the primary interest in disclosure.³⁷ The first factor simply asks whether the Requester has a commercial interest that would be furthered by the requested disclosure. The primary interest factor compares the magnitude of the public interest and the Requester’s commercial interest. If either the Requester has no commercial interest or the public’s interest is greater than any identified commercial interest of the Requester, the second fee waiver requirement is met. As stated in Requester’s original Request, Requester is a not-for-profit organization and has no commercial interest in these records. Accordingly, the second requirement for a full fee waiver is met.

II. Expedited Processing is Warranted in this Case

Requester is also entitled to expedited processing. Pursuant to statute and regulation, expedited processing should be granted when there is a “compelling need” for the information³⁸ and “[a]n urgency to inform the public about an actual or alleged federal government activity,” and the requester is a “person primarily engaged in disseminating information.”³⁹ ALC’s Request satisfies these requirements.

A. There is a Compelling Need for the Information

This request concerns the TRUST Act, a California bill that has been a subject of intense media and public attention at both the state and national level.⁴⁰ The TRUST Act, which seeks to restore trust between police and immigrant communities in the wake of

³⁷ 6 C.F.R. § 5.11(k)(3).

³⁸ 5 U.S.C. § 552(a)(6)(E)(i)(I).

³⁹ 5 U.S.C. § 552(a)(6)(E)(i)(II); 6 C.F.R. § 5.5(d)(1).

⁴⁰ See, *supra* note 33.

the controversial Secure Communities deportation program, was approved by the California Assembly and Senate in August 2012, but vetoed by the Governor on September 30, 2012.

The public has a compelling need to know what ICE communicated to California officials and the public regarding the TRUST Act and Secure Communities, the deportation program that provided the impetus for the TRUST Act. ICE has previously provided misleading information to Californians regarding Secure Communities, and has put heavy pressure on jurisdictions that have passed policies similar to the TRUST Act.⁴¹ Given ICE's record and the importance of this issue to Californians, there is a compelling need for public oversight of communications between ICE and California officials regarding the TRUST Act.

B. There is an Urgency to Inform the Public

It is urgent that Requester obtains the requested information in a timely fashion. California Assemblymember Tom Ammiano reintroduced the TRUST Act in the California Assembly on December 3, 2012, and Governor Brown has expressed his interest in working with advocates and the Legislature to amend the TRUST Act so that it can be passed into law in 2013.⁴² Requester needs prompt access to the requested documents in order to ensure the public's ability participate in the on-going work on this bill in an informed manner.

C. Requester is Primarily Engaged in Disseminating Information

⁴¹ See *NDLON v. ICE*, 811 F. Supp. 2d 713, 742 (S.D.N.Y. 2011) (finding "ample evidence that ICE and DHS have gone out of their way to mislead the public about Secure Communities"); compare Memorandum of Agreement between DHS, ICE, and California Dep't of Justice, available at http://www.ice.gov/doclib/foia/secure_communities-moa/california-sc-moa.pdf (describing Secure Communities as "a comprehensive ICE initiative . . . to identify, detain, and remove from the United States aliens who have been convicted of serious offenses") with Secure Communities Nationwide Interoperability Statistics, available at http://www.ice.gov/doclib/foia/sc-stats/nationwide_interop_stats-fy2012-to-date.pdf (showing that over half of all Californians deported through Secure Communities had either no criminal history or convictions for offenses that were lower than level 1), Exhibit N; see also, *supra* note 29.

⁴² Rojas, *supra* note 33; Taxis, *supra* note 33.

Requester's engagement in disseminating information is described in detail above and in its initial request of December 21, 2012. As described therein, Requester has expertise and experience in disseminating information related to immigration policy. Requester intends to disseminate the information obtained through this request to the public.

For the foregoing reasons, Requester is entitled to a fee waiver and expedited processing, and ICE's initial determination should be reversed.

Sincerely,

J. Ryan Graham
Jennifer Chin
Cristina Salvato
Certified Law Students
UC Irvine School of Law
Immigrant Rights Clinic

Jessica Karp
Adjunct Professor of Law
UC Irvine School of Law
Immigrant Rights Clinic

Sameer Ashar
Director
UC Irvine School of Law
Immigrant Rights Clinic

Attorneys for Asian Law Caucus

EXHIBIT J

U.S. Department of Homeland Security
500 12th ST. SW; STOP 5009
Washington, DC 20536-5009



U.S. Immigration
and Customs
Enforcement

March 4, 2013

J. Ryan Graham
UC Urvine Law Clinic
PO Box 5479
Irvine, CA 92616-5479

Dear Sir or Madam:

The Department of Homeland Security has received your letter appealing the adverse determination of your Freedom of Information Act/Privacy Act (FOIA/PA) request by U.S. Immigration and Customs Enforcement seeking records in ICE's possession relating to communications within ICE and between ICE and other entities about California's Transparency and Responsibility Using State Tools (TRUST) Act, ICE detainers in California, and the Secure Communities Program in California. Your appeal, dated February 26, 2012, was received on February 27, 2012.

On behalf of the Chief for the Government Information Law Division, we acknowledge your appeal request of **2013FOIA8088** and are assigning it number **OPLA13-730** for tracking purposes. Please reference this number in any future communications about your appeal.

A high number of FOIA/PA requests have been received by the Department. Accordingly, we have adopted the court-sanctioned practice of generally handling backlogged appeals on a first-in, first-out basis.¹ While we will make every effort to process your appeal on a timely basis, there may be some delay in resolving this matter. Should you have any questions concerning the processing of your appeal, please contact ICE FOIA at (866) 633-1182, or by email at ice-foia@dhs.gov.

Sincerely,

A handwritten signature in cursive script, appearing to read "Grace Cheng".

Grace Cheng
Chief

Government Information Law Division
ICE Office of the Principal Legal Advisor
Department of Homeland Security

¹ Appeals of expedited treatment denials will be handled on an expedited basis.

EXHIBIT K

U.S. Department of Homeland Security
500 12th St. SW: STOP 5009
Washington, DC 20536-5009



**U.S. Immigration
and Customs
Enforcement**

March 15, 2013

J. Ryan Graham
UC Irvine Law Clinic
PO Box 5479
Irvine, CA 92616-5479

RE: OPLA13-730, 2013FOIA8088

Dear Sir or Madam:

This is in response to your letter dated February 26, 2013, appealing the adverse determination in response to your Freedom of Information Act/Privacy Act (FOIA/PA) request. The initial request asked for records in ICE's possession relating to communications within ICE and between ICE and other entities about California's Transparency and Responsibility Using State Tools (TRUST) Act, ICE detainers in California, and the Secure Communities Program in California.

U.S. Immigration and Customs Enforcement (ICE) initially denied your request in part by denying your request for expedited processing, your request for news media status, and by denying your request for a fee waiver. You have appealed each of these three decisions. ICE has further reviewed your request in question that gave rise to this partial denial of your request for expedited processing, news media status, and your request for a fee waiver. Our analysis follows.

Fee waivers are properly granted "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester."¹ Under the DHS FOIA regulations, 6 C.F.R. § 5.11.(k)(2) ICE-FOIA is required to analyze six factors in determining whether the applicable legal standard for fee waiver has been met. Those six factors are as follows: (1) whether the subject of the requested records concerns "the operations or activities of the government"; (2) whether the disclosure is "likely to contribute" to an understanding of government operations or activities; (3) whether disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requestor of a narrow segment of interested persons; (4) whether the contribution to public understanding of government operations or activities will be "significant"; (5) whether the requester has a commercial interest that would be furthered by the requested disclosure; and (6) whether the magnitude of any identified commercial interest to the requestor is sufficiently large in comparison with the public interest in disclosure that disclosure is primarily in the commercial interest of the requestor.

¹ See, *Piper v. U.S. Dep't of Justice*, 294 F. Supp. 2d 16,24 (D.D.C. 2003).

As to the first requirement, there is no dispute that the requested information concerns the operations or activities of the government. Within the request, documents sought specifically include government policies, reporting, tracking, investigations, and other documentation concerning government activities.

The second requirement requires that the disclosure "likely contribute" to the understanding of the public at large regarding specific government operations or activities. As to the second requirement, there is no dispute that the requested information is likely to contribute to the public understanding of the operations and activities of the government, but only to the extent that it reaches a large segment of the public. However, you have not articulated sufficient nexus between the contents of all communications included in your incredibly broad request and the likelihood of contribution to the public understanding of government operations and activities.

The third requirement necessitates that disclosure contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons.² More specifically, agencies must evaluate the ability of the requester to disseminate the information.³ Furthermore, the intended method of that dissemination⁴ must be included in the request for a fee waiver.

The request fails to specify the ability of the requester to disseminate the information or the intended method of dissemination. The requester merely recites various means of dissemination it has at its disposal, primarily to its own limited membership, but offers no plan of how information derived from the current request will be disseminated to the public at large. Considering the burden is on the requester to show entitlement to a fee waiver, the fourth factor in determining a fee waiver has also not been met, as without an explanation of how the information will be disseminated to a larger segment of the population, it is not possible to determine whether or not the contribution to public understanding of government operations or activities will be "significant".

As such, the determination regarding the denial of a fee waiver request was proper in all respects under the applicable provisions of 6 C.F.R. § 5.11.(k)(2) cited above.

The requester has also argued that they are a representative of the news media, and are thus entitled to a fee waiver. The requester, however, is not "an entity that is organized and operated to publish or broadcast news."⁶ The website of the requester describes in detail the legislative, judicial, and community advocacy of the requester. At those instances where the website mentions media appearances by Asian Law Caucus staff, those appearances occur in the context of news broadcasts by regular media outlets such as ABC News and KTVU. The request also only vaguely references website postings, campaigns, and letters to public officials that would be used to publish the requested records

² See, Forest Guardian v. U.S. Dept. of Interior, 416 F.3d at 1179 {10¹ Cir. 2005}.

³ Orloff, No. 98-2819, slip op. at 21 (D.D.C. Mar. 22, 2002).

⁴ Hall v. CIA, No. 04-0814, 2005 WL 850379, at 7 (D.D.C. Apr. 13, 2005).

⁵ Critical Mass Energy Project v. NRC, 830 F.2d 278, 281 (D.C. Cir. 1987).

⁶ 6 C.F.R. § 5.11(b)(6)

Considering the fee status of the requester, the denial of expedited processing was also proper, as the Asian Law Caucus is not "primarily engaged in disseminating information"⁷ as they asserted in their request.

This decision is the final action of U.S. Immigration and Customs Enforcement concerning your FOIA/PA request. Inasmuch as you consider this to be a denial of your appeal, you may obtain judicial review of this decision pursuant to the provisions of 5 U.S.C. § 552(a)(4)(B) in the United States District Court in the district in which you reside, or in which the agency records are situated, or in the District of Columbia.

The Office of Government Information Services (OGIS) also mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. If you wish to contact OGIS, you may email them at ogis@nara.gov or call 1-877-684-6448.

Should you have any questions regarding this appeal closure, please contact ICE at ice-foia@dhs.gov. In the subject line of the email please include the word "appeal", your appeal number, which is **OPLA13-730**, and the FOIA case number, which is **2013FOIA8088**.

Sincerely,

Catherine Gonzalez Gallego

Grace Cheng
Chief

Government Information Law Division
ICE Office of the Principal Legal Advisor
Department of Homeland Security